

Legal Garlics for Lay Man

Justice G. Radhakrishna Rao

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PREFACE

The public, social workers, lawyers and representatives and institutions are interested in legal aid for developing new strategies and technics appropriate to different situations in the country for reaching justice to the poor through the instrument of law.

Great epics like Ramayan and Mahabharat and the stories in Panchatantra and also the sayings of the great Rishis and religious leaders are still remembered by the people because of their propagation through several modes one of which being by way of short stories.

Lay man means a man not connected or acquainted with law. If awareness has been created in the mind of a lay man, definitely it will go a long way in the history of the judicial system.

Taste differs from person to person and the receptive capacity also differs from individual to individual. In addition to the modes like 'Harikatha', 'Burra Katha', puppet show, cinema, video and serials on T.V., which are propagating the legal rights of the citizens, I thought that with the experience I have gained it would be better to transform the statutory provisions into short stories which can be well made to remember by the public. So, with that object in mind, the statutory provisions with reference to the day to day problems, which are common in nature, have been taken into account from about 50 statutes and are phrased into short stories.

Garlics are useful in many ways for the health of a man. Legal problems, if effectively shown, can catch the mind of the needy litigant public. So, the title that is given to this book, viz., "LEGAL GARLICS" is deemed to be an appropriate one. I hope that these 501 short stories, which is christened as "Legal Garlics" will serve the needy public.

The stories written here are not real and the characters or the names of the persons or the institutions are not intended to harm the interests of anyone and they are only imaginary. The story part of the each "GARLIC" is in simple English.

Author.

The persons who assisted me in bringing out this book are:

Sri K.V. Satyanarayana (P. S. to the Hon'ble Judge)

Sri Srinivasa S. Gogineni

Smt. Indira Gogineni

Sri Sitaram P. Gogineni, Advocate

Sri Thomas Thekkedem

Smt. Mary Thomas Thekkedem

Sri Mohan (Cartoonist)

The stories, characters & locations are purely imaginary and bear no resemblance to any person living or dead.

The author and the publisher are not responsible for the consequences of action taken in pursuance of the opinions expressed in this book.

PART 1

1

THE ARMS ACT, 1959

(Act No.54 of 1959)

1. *Non-production of licence for carrying fire arms*
2. *Possession of fire arms without a licence*
3. *Possession of fire arms with intent to use the same for unlawful purpose*
4. *Use of fire arms with intent to resist or prevent lawful arrest*

1. The Sub-Inspector of Police, Aleru was on night rounds in the town and he observed three persons concealing their identity. On suspicion, he stopped them and found that they were carrying one box which contained guns and ammunition. There upon, he asked for licence for those fire arms, etc. but they did not produce any licence. They also refused to give their names and addresses, when asked for. What can the Sub-Inspector do under such circumstances by virtue of his power?

* Under Section 19 of the Arms Act, 1959, any police officer



may demand the production of licence from any person who is carrying any arms or ammunition. If the person upon whom a demand is made, refuses or fails to produce the licence or to show that he is entitled by virtue of the Arms Act or any other law to carry such arms or ammunition without a licence, the officer may require him to give his name and address and if that person refuses to give his name and address or if the officer suspects that person of giving false name or address or intending to abscond, such officer may arrest him without warrant. So, as the three persons, who were found carrying guns and ammunition without licence, failed to give their names and addresses, the Sub-Inspector can seize the arms and ammunition and arrest them without warrant. They are liable for prosecution and also liable for punishment under Section 25 (1B) of the Arms Act.

2. The Inspector of Police, Narsampet was proceeding on the road at about 9.00 P.M. He found four persons coming from opposite direction carrying some baskets on their heads. As it was a noted area for Naxalites and bomb throwing had become common in those parts, on suspicion, he stopped those persons and examined the contents in the basket and found revolvers, pistols, guns and ammunition and country-made bombs. On interrogation, they failed to produce any licence for them. Whether they are liable for any offence?

* Under Section 25 (1B) (a) of the Arms Act, 1959, whoever has in his possession or carries any fire arm or ammunition, in contravention of Section 3, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and shall also be liable to fine. As the above four persons have failed to produce any licence for carrying the fire-arms and ammunition, they are liable for the offence under Sec. 25 (1B) (a) of the said Act.

3. There are long standing rivalries between the Ex-Sarpanch group and present Sarpanch group in Kavali village on account of Panchayat elections. Criminal cases are also pending against both the groups. One day, the sitting Sarpanch group persons are on the way to the court to give evidence against the persons of ex-Sarpanch. On coming to know about the same, the Ex-Sarpanch people waylaid, armed with guns, with the intention of stopping them to attend the court. On information, the police rushed to the

spot and seized the guns. Whether the ex-Sarpanch group persons have committed any offence?

- * Under Section 27 of the Arms Act, 1959, whoever has in his possession any arms with intent to use the same for any unlawful purpose is punishable with imprisonment for a term which may extend to seven years and with fine. So, as the Ex-Sarpanch group persons are found in possession of arms with intent to use the same for preventing the present Sarpanch group persons to give evidence against them, they are liable for punishment under Sec.27 of the Arms Act.

4. One contractor is getting illicit arrack manufactured on the outskirts of the village. Excise staff, on coming to know of the same, raided that place. Then the contractor who is in possession of a gun fired it in open air preventing the excise staff from arresting him. However, the excise staff overpowered the contractor and seized the fire arm and took them into custody. Whether the contractor and his party are liable for any offence for using the gun?

- * Under Section 28 of the Arms Act, 1959, whoever makes or attempts to make any use of a firearm with intent to resist or prevent the lawful arrest or detention of himself or any other person shall be liable with imprisonment for a term which may extend to seven years and with fine. As the contractor has used gun preventing the excise officials from arresting him and his men, the contractor is liable for the offence under Section 28 of the Arms Act, 1959.

2

THE CHILD MARRIAGE RESTRAINT ACT, 1929
(Act No. 19 of 1929)

5 & 6. *Consequences of marriage of children*

5. Bhavani Prasad, who studied B.Com. was selected as Deputy Inspector of Co-operative Societies in the test conducted by the A.P. Public Service Commission. His maternal uncle's daughter had studied Intermediate. Bhavani Prasad was aged 20 years and

Vijaya, the daughter of his maternal uncle was aged 17 years. From their childhood, the relatives felt that both would be married. But contrary to the feelings the marriage of Bhavani Prasad was fixed with Soujanya, the daughter of a contractor who offered heavy dowry. The marriage was finalised and invitation cards were distributed. Having been aggrieved by this marriage, the father of Vijaya filed a complaint in a court of law for an injunction against Bhavani Prasad and his parents and Soujanya and her parents prohibiting the proposed marriage on the ground that both the bride and bridegroom were 'children' within the meaning of Section 2 (a) of the Child Marriage Restraint Act, 1929 the marriage of whom was an offence under Sections 3 to 5 of the said Act. What is the effect of that complaint?

- * Since the proposed marriage is between the boy, aged 20 years and the girl, aged 17 years, who are still children as per the definition of 'child' given under Section 2 (a) of the Child Marriage Restraint Act, 1929, the marriage of whom is an offence, the court can issue an injunction against the persons concerned with the marriage, viz., the bride, the bridegroom and their respective parents prohibiting such marriage.

6. Ramanadham is working as Tahsildar in Kothapeta of West Godavari District. He has a son, Dhanunjaya Rao, aged 20 years. He is studying B.E. Kameswara Rao is his maternal uncle residing at Rajahmundry and he has a daughter, Lavanya who is studying Intermediate and since the birth of Lavanya they were under the impression that Lavanya would be given in marriage to Dhanunjaya Rao. In Kothapeta where Ramanadham is working, there is one big landlord, Sundarayya. He has a daughter, Sujatha, aged 16 years. Sundarayya requests the Tahsildar to give his son in marriage to his daughter and he offers to send his son abroad for further education and also give good dowry. Ramanadham's brother-in-law, Kameswara Rao is a poor man. Though from the childhood of Lavanya, they thought of giving her to Dhanunjaya Rao, Ramanadham disliked that match in the wake of the offer given by Sundarayya. Ultimately, the marriage is performed between Dhanunjaya Rao and Sujatha, the daughter of the landlord Sundarayya. Naturally, this is not liked by the brother-in-law of Ramanadham. Having been aggrieved by the marriage, Kameswara Rao files a complaint before the court immediately after the marriage. He has also filed marriage

photos along with the complaint. What is the effect of the complaint?

- * Under Section 2 (a) of the Child Marriage Restraint Act, 1929, 'child' is defined as a person who, if a male, has not completed twenty one years of age and if a female, has not completed eighteen years of age. Under Section 5 of the Child Marriage Restraint Act, 1929, whoever performs, conducts or directs any child marriage shall be punishable with simple imprisonment which may extend to three months and shall also be liable for fine. As the complaint is filed within one year of the marriage, and as the bride is aged less than 18 years and bridegroom is less than 21 years of age, it is an offence and so the persons who performed such a marriage are liable for punishment.

3

THE CODE OF CIVIL PROCEDURE, 1908

(Act No. 5 of 1908)

- 7. *Res judicata*
- 8. *Jurisdiction of court*
- 9. *Bar of filing of a second suit*
- 10. *Failure to attend court after receiving summons*
- 11. *Compensatory costs for false or vexatious litigation*
- 12. *Costs for granting adjournments*
- 13. *Attachment of properties outside the jurisdiction of the court which passed the decree*
- 14. *Execution of decree by attachment and arrest*
- 15. (a) *Arrest of the judgment debtor after sunset-Effect*
 - (b) *Power of Amin to break open the door of any room in which J.Dr is hiding*
 - (c) *Power of Amin to release the J.Dr on payment of decretal amount*
- 16. *Release of J.Dr on his expressing to file an I.P.*
- 17. *Arrest of woman in execution of money decree-Effect*
- 18. *Arrest warrant in execution of decree*

19. *Arrest and release of J.Dr - Effect of decree debt*
- 20 & 21. *Section 60 CPC - Exemptions from attachment*
22. *Effect of transfer of property after attachment*
23. *Interpleader suit*
24. *Compensation for instituting suit without reasonable ground*
25. *Arrest of woman in execution of money decree*
26. *Appointment of Commissioner to examine witnesses*
27. *Restitution*
28. *Caveat*
29. *Addition of parties*
30. *Bar to sue in respect of any portion of claim omitted or relinquished in the earlier suit*
31. *Setting aside of ex parte decree*
32. *Suit on lost negotiable instrument*
33. *Filing of affidavit*
34. *Legal representatives*
35. *Deposit of suit amount pending the trial of the suit*
36. *Indigent person - Incapacity to pay court fee*
37. *Dispauper on proof of plaintiff's means to pay court fee*
38. *Attachment of defendant's properties before judgment*
39. *Breach of terms of injunction*

7. Parthasaradhi filed a suit against Gopalaswamy for recovery of possession of the plaint schedule house and Gopala Swamy contested the suit by filing a written statement claiming title in himself. After trial, the suit was dismissed on merits. Subsequently, Parthasaradhi filed another suit against Gopalaswamy for the same relief of possession putting forth some additional grounds stating that, they could not be taken in the earlier suit. Whether the second suit filed by Parthasaradhi is maintainable?

- * Under Section 11, C.P.C., under the principle of 'res judicata', no court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent

suit or the suit in which such issue has been subsequently raised and has been heard and finally, decided by such court. So, as Parthasaradhi has previously filed a suit for the same relief against the same person, under the principle of 'res judicata', the second suit is not maintainable.

8. Raghuvir is a resident of Visakhapatnam. His class mate, Gopala Rao settled down at Vijayawada. They meet at the house of their common friend at Vijayawada. Though they are class mates, there are business rivalries between them. While Raghuvir and Gopala Rao are discussing some business affairs, some heated exchanges arise between them and ultimately, Raghuvir causes some damage to the imported watch worth more than Rs.5,000/- belonging to Gopala Rao. Gopala Rao wants to file a suit against Raghuvir for the value of the watch. Where can he file the suit against Raghuvir?

- * Under Section 19, C.P.C., where the suit, if for compensation for wrong done to the person or to movable property, if the wrong was done within the local limits of the jurisdiction of one court and the defendant resides or carries on business or personally works for gain within the local limits of the jurisdiction of another court, the suit may be instituted at the option of the plaintiff in either of the said courts. So, Gopala Rao can file the suit against Raghuvir either at Vijayawada where the wrong was done or at Visakhapatnam where Raghuvir, the defendant was residing.

9. Somanna executed an agreement of sale in favour of Subbanna agreeing to sell his one acre of wet land for a sum of Rs. 10,000/-, and agreed to execute the regular sale deed within three months, thereafter. But he did not execute the sale deed within the stipulated period in favour of Subbanna. Ultimately, Subbanna filed a suit against Somanna for specific performance of the agreement to sell, and it was finally decreed. Subsequently, the defendant, Somanna filed another suit against Subbanna for setting aside the decree in the former suit on the ground that the court which has tried the former suit has no jurisdiction. Can the latter suit filed by Somanna be entertained?

- * Under Section 21-A, C.P.C., no suit shall lie challenging the validity of a decree passed in a former suit between the same parties or between the parties under whom they or any of them

claim litigating under the same title on any ground based on an objection as to the place of suing. So, in view of this clear bar under Section 21-A, the suit filed by Somanna for setting aside the decree passed in the former suit on objection, as to place of suing is not maintainable.

10. M/s. Poorna Electronics Pvt. Limited is a company dealing in electronics. Poorna is one of the directors of the company. As there are differences between the directors' interests, Poorna has filed a suit for rendition of accounts. The Managing Director of the said company is Bhaktavatsalam. He is in possession of some of the important account books relating to the company. He does not produce the same in the court, nor does he attend the court to give evidence. What steps can be taken against Bhaktavatsalam, the Managing Director?

- * On the application of the plaintiff, Poorna, the court can issue summons to Bhaktavatsalam, the Managing Director to appear before the court on a particular day to give evidence and to produce certain documents. If he fails to attend the court on the appointed day after receiving the summons, under Section 31, C.P.C., the court may compel his attendance by issuing a warrant for his arrest. The court may also attach and sell his property, impose a fine upon him not exceeding five hundred rupees or order him to furnish security for his appearance and in default, to commit him to the civil prison.

11. Ramanna Gowd is a resident of Bhyri village. He was elected as one of the Directors of the District Co-operative Society and was contesting for the post of President. He requested Naresh Yadav, who was also elected as one of the Directors of the said Society, to cast his vote in his favour. He refused to cast his vote in his favour as he belonged to the opposite party and the opposite party leader was contesting for the same. Ultimately, Ramanna Gowd was defeated. He bore grudge against Naresh Yadav. To wreak vengeance, Ramanna Gowd forged a promissory note and filed a suit against Naresh Yadav. The suit was hotly contested and ultimately, it was proved that it was a false and vexatious claim, initiated by the plaintiff, Ramanna Gowd against the defendant. Is there any remedy for the defendant to claim compensation from the plaintiff, for filing false and vexatious claim against him?

- * Under Section 35-A, C.P.C., if any suit or other proceeding is proved to be false or vexatious to the knowledge of the party by whom it has been put forward and the court, if it so thinks fit, may make an order for the payment, to the other side by the party by whom such claim is made, of costs by way of compensation. The amount so granted, shall not exceed Rs. 3,000/- or shall not exceed the limits of the pecuniary jurisdiction of the court whichever is less. No person against whom an order for payment of compensatory costs in respect of false or vexatious claim or defence has been made, shall be exempted from any criminal liability in respect of any claim or defence made by him.

12. Papayya was in wrongful possession of the land, belonging to Dharmanna. Dharmanna filed a suit against Papayya for recovery of possession and for mesne profits. Papayya knew that he had no case but as he was getting very good income from the land on which some commercial crops were being raised, Papayya wanted to drag on the suit on one pretext or the other. So, he devised the method of not summoning the witnesses or was not paying batta for the issue of summons to the witnesses or by filing applications one after the other for adjournments, enclosing medical certificates. The plaintiff, Dharmanna spent a lot of money for attending the court along with his witnesses for every adjournment. After taking about 10 to 15 adjournments, the defendant, Papayya again requested for an adjournment and the defendant, Dharmanna strongly and vehemently opposed the same. What can the court do under such circumstances?

- * Under Section 35-B, C.P.C., if, on any date fixed for the hearing of a suit or for taking any step therein, the party to the suit fails to take the step which he was required by or under the Code to take on that date or obtains an adjournment for taking such step or for producing evidence or on any other ground, the court may, for reasons to be recorded, make an order requiring such party to pay to the other party such costs as would, in the opinion of the court, be reasonably sufficient to reimburse the other party in respect of the expenses incurred by him in attending the court on that date and payment of such costs on the date next following the date of such shall be a condition precedent to the further prosecution of the suit and such costs shall not be included in the costs awarded in the decree of the suit.

13. Pradeep obtained a money decree against Kranthi Kumar for a sum of Rs. 10,000/- in the court of the Prl. District Munsif, Kakinada. The defendant, Kranthi Kumar's properties were situated at Anakapalli, which was out side the jurisdiction of Kakinada Prl. District Munsif's Court, which passed the decree. Pradeep, the plaintiff wanted to get transfer of the decree to Anakapalli District Munsif's Court but he received information that Kranthi Kumar was going to sell away the property situated at Anakapalli. The plaintiff, Pradeep was told that there would be delay in transmitting the decree to Anakapalli D.M.C. What can Pradeep do under such circumstances?

* Under Section 46, C.P.C., the plaintiff, Pradeep can file an application in the Prl. District Munsif's Court, Kakinada which passed the decree, for the issuance of precept and upon such application, the court of Prl. District Munsif, Kakinada may issue a precept to the District Munsif's Court at Anakapalli, where the properties of Kranthi Kumar, the defendant are stated to have been situated which would be competent to execute such decree to attach the property of the defendant and on receipt of the precept, the District Munsif, Anakapalli shall proceed to attach the property in the manner prescribed in regard to the attachment of property in execution of a decree. However, under the proviso to Section 46, C.P.C., no attachment under a precept shall continue for more than two months unless the period of attachment is extended by an order of the court which passed the decree or unless before the determination of such attachment, the decree has been transferred to the court by which the attachment has been made and the decree holder has applied for an order for the sale of such property.

14. Sivaramayya obtained a money decree against Kondayya for a sum of Rs. 8,500/-. Kondayya did not pay the amount decreed against him within a reasonable time, though he had got sufficient means to pay. He has also got immovable properties. How can Sivaramayya get the amount decreed in his favour?

Under Section 51, C.P.C., if the decree obtained by Sivaramayya, the plaintiff has not been satisfied by the defendant, Kondayya, the plaintiff-decree holder can file execution petition in the court which passed the decree for attachment and sale of the property belonging to the judgment

debtor-defendant, Kondayya or for arrest and detention of the judgment debtor-defendant Kondayya, in prison.

15. (a) Jagadeesh obtained a money decree against Suresh for Rs. 15,000/-. As Suresh did not satisfy the decree amount, Jagadeesh filed an execution petition for the arrest of Suresh under Order 21 Rule 37 and Section 55, C.P.C. After following the due procedure, the execution court issued arrest warrant against Suresh. The Court Amin went to the village of Suresh and enquired about the whereabouts of Suresh and finally, reached his house after sunset. Can he arrest the judgment debtor, Suresh by entering into his house after sunset?

* Under the first proviso to Sub-section (1) of Section 55, C.P.C., for the purpose of making an arrest of the judgment debtor, no dwelling house shall be entered after sunset and before sunrise. So, by the time the court Amin went to the house of the judgment debtor, Suresh as it was after sunset, he cannot enter into his house.

(b) The Court Amin waited in that village during that night and he went to the house of Suresh at about 7-30 A.M. on the next day after sunrise, he gained entrance into the house and asked about the judgment debtor, Suresh. There were some ladies in the house. He was told that the judgment debtor, Suresh was not in the house. However, the Amin had reason to believe that he was in one room, in that house. Can the Amin break open the door of the room in which the judgment debtor is believed to be hiding?

* Under the second proviso to sub-section (1) of Section 55, C.P.C., when the officer of the court authorised to make the arrest has duly gained access to any dwelling house he may break open the door of any room in which he has reason to believe the judgment debtor is to be found.

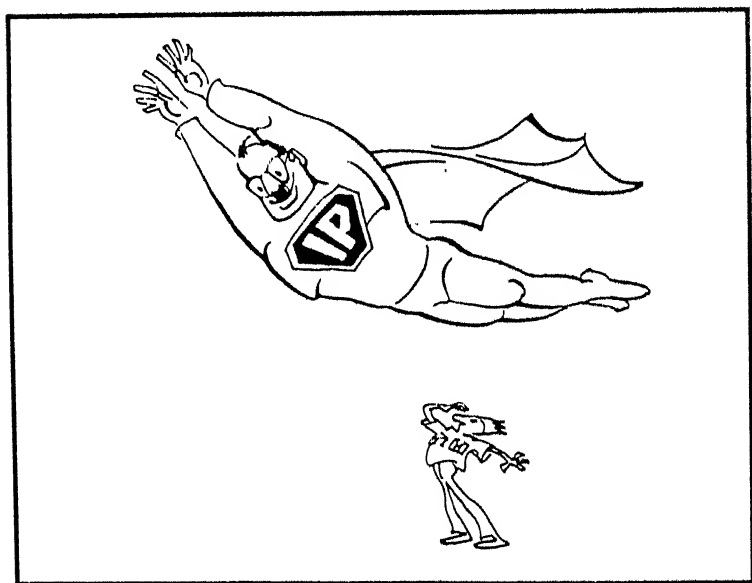
Under the third proviso if the room is in the actual occupancy of a woman, who is not the judgment debtor, and who, according to the customs, does not appear in public, the officer shall give notice to her and after allowing a reasonable time, he may enter the room for the purpose of making the arrest.

(c) The Court Amin gained entrance into the room where the judgment debtor was believed to be hiding by breaking open the

door and ultimately arrested Suresh, the judgment debtor. At that time, the brother-in-law of Suresh came forward and paid the entire decretal amount including the costs of the arrest. Can the Amin release the judgment debtor?

- * Yes. Under the fourth proviso to sub-section (1) of Section 55, C.P.C., where the judgment debtor is arrested in execution of the decree for payment of money and when the amount of the decree and the costs of the arrest were paid to the Court Amin, the Court Amin shall at once release the judgment debtor.

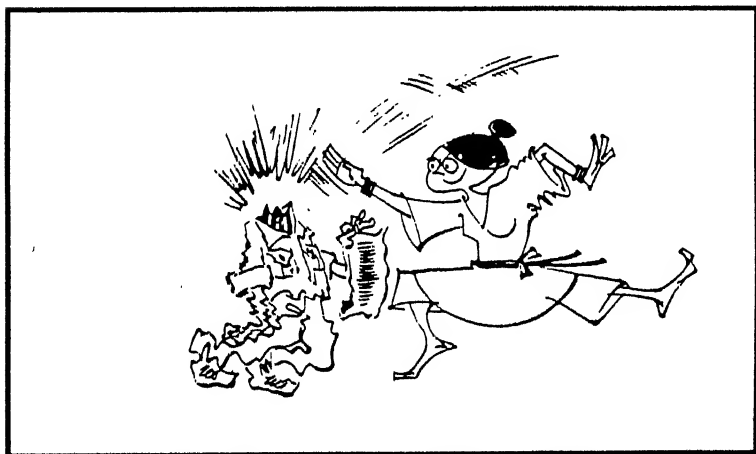
16. Seetharamayya obtained a money decree against Gopalakrishna Murthy for Rs. 10,000/-. Seetharamayya waited for reasonable time but Gopalakrishna Murthy did not pay even a single pie under the decree. Then the decree holder, Seetharamayya filed an execution petition against the judgment debtor, Gopalakrishna Murthy for his arrest and detention in civil prison in execution of the decree. Gopalakrishna Murthy was arrested by the Court Amin pursuant to the arrest warrant, issued by the court and he was brought before the court. The judgment debtor, Gopalakrishna Murthy expressed that he had no money to pay the decretal amount and that he had no means. What can the court do in such circumstances?



- * Under the third proviso to sub-section (1) of Sec. 55, C.P.C., where a judgment debtor is arrested in execution of a decree for the payment of money and brought before the court, the court shall inform him that he may apply to be declared an insolvent and that he may be discharged if he has not committed any act of bad faith regarding the subject of the application and if he complied with the provisions of the law of insolvency for the time being in force.
- * Under the fourth proviso to sub-section (1) of Sec. 55, C.P.C., where the judgment debtor expresses his intention to apply to be declared an insolvent and furnishes security, to the satisfaction of the court, that he will within one month so apply and that he will appear when called upon in any proceeding upon the application or upon the decree in execution of which he was arrested, the court may release him from arrest.

17. Kumaraswamy obtained a money decree for Rs. 7,500/- against Parvathi. Even after passing of the decree, the defendant Parvathi did not pay the decretal amount. Then, Kumaraswamy filed an execution petition for arrest of the judgment debtor, Parvathi in execution of the decree. Can the court issue an arrest warrant against Parvathi, the judgment debtor?

- * Under Section 56, C.P.C., the court shall not order the arrest or detention in the civil prison of a woman in execution of a decree for the payment of money.



18. Ramaswamy has obtained a money decree against Bheemanna for a sum of Rs. 350/-. Even after passing of the decree, Bheemanna did not pay the amount. Then Ramaswamy, the decree holder, filed execution petition for arrest and detention of the judgment debtor, Bheemanna in execution of the money decree. Can the court arrest Bheemanna in execution of the decree obtained by Ramaswamy against Bheemanna for Rs. 350/-?

- * Under sub-section (1-A) of Section 58, C.P.C., no order for detention of the judgment debtor in civil prison in execution of a decree for the payment of money shall be made, where the total amount of the decree does not exceed Rs. 500/-. So, under sub-section (1A) of Sec. 58, C.P.C., arrest warrant cannot be issued against Bheemanna as the decree amount is less than Rs. 500/-.

19. Kotayya obtained a decree for recovery of Rs. 5,000/- from Seethanna. As Seethanna did not pay the decretal amount the plaintiff-decree holder, Kotayya filed an execution petition against the defendant-judgment debtor, Seethanna for his arrest and detention in execution of the decree. Accordingly, the court ordered arrest and detention of the judgment debtor, Seethanna and issued arrest warrant. Pursuant to the arrest warrant, the Court Amin arrested Seethanna and brought him before the court. He was kept in civil prison for the maximum period of three months and thereafter he was released. After his release, again Kotayya asked for the decree amount but the judgment debtor said to Kotayya that as he was kept in civil jail for three months, the decretal amount is wiped out. Thereupon, Kotayya has again filed an execution petition for his arrest. What is the position?

- * Under sub-section (2) of Section 58, C.P.C., a judgment debtor released from detention shall not, merely by reason of his release, be discharged from his debt but he shall not be liable to be re-arrested under the decree in execution of which he was detained in the civil prison. So, under this section by reason of the arrest and detention of the judgment debtor, Seethanna and his discharge, the decree debt will not be wiped out and shall not be deemed to be discharged and it is subsisting. However, the judgment debtor shall not be re-

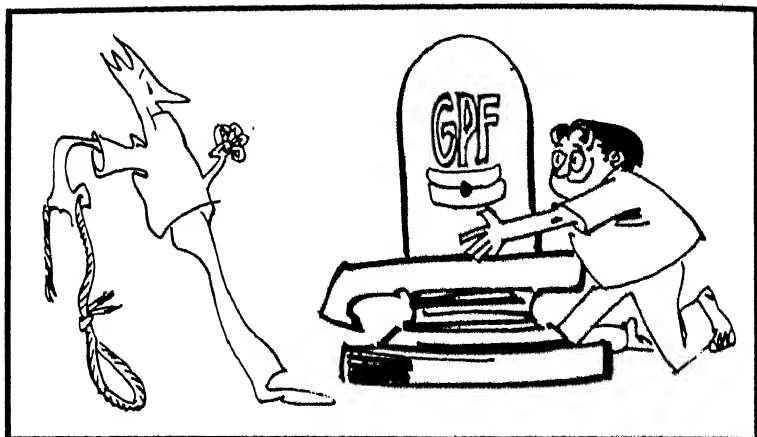
arrested in execution of it. The decree holder can take other steps which are open to him against Seethanna like attachment and sale of his properties.

20. Somayya, who lent Rs. 10,000/- to his friend, Srikanth on a promissory note, filed a suit in the civil court for realisation of the principal amount of Rs. 10,000/- together with interest at the rate of 12% P.A., which comes to Rs. 2,400/- for a period of two years, total being Rs. 12,400/-. The suit was decreed one and half years thereafter, for the suit amount together with interest at 12% P.A. and costs of Rs. 1600/-. Even after waiting for another six months, Srikanth did not pay the amount. Then Somayya filed an execution petition for a total sum of Rs. 16,400/- and also sought attachment of Srikanth's G.P.F. amount and also salary attachment. The court passed an order attaching salary of Rs. 200/- only and refused to attach G.P.F. The salary of Srikanth was Rs. 1,000/- per month. What is the effect of attachment?

- * Under Section 60, C.P.C., salary to the extent of the first four hundred rupees and two thirds of the remainder shall not be liable for attachment in execution. Similarly, General Provident Fund is also exempt from attachment.

21. Ramachandra Rao is working as Senior Assistant in Mandal Revenue Office, Suryapeta. He is contributing to General Provident Fund account at the rate of Rs. 500/- per month and by the end of March 1993, an amount of Rs. 10,000/- is lying to his credit. While so, Ramachandra Rao who has a big family having three college-going children borrows a sum of Rs. 8,000/- from a money lender. As Ramachandra Rao does not repay the amount, the money lender files a civil suit against him and obtains a decree for a total amount of Rs. 10,000/- including interest and costs. Having come to know that an amount of about Rs. 10,000/- is lying to the credit of the judgment debtor, Ramachandra Rao in his G.P.F. account, the money lender files an execution petition for attachment of the G.P.F. accumulations of Ramachandra Rao in execution of the decree. Can the said G.P.F. be attached in execution of the decree?

- * Under clause (ka) of sub-section (1) of Section 60, C.P.C., all deposits and other sums in or derived from any fund to which the Public Provident Fund Act, 1968 applies is exempt from attachment in execution of money decree. So the G.P.F.,



which is a deposit under Public Provident Fund Act, 1968, is exempt from attachment and it cannot be attached in execution of the decree against Ramachandra Rao.

22. Soma Raju obtained a money decree against Kantha Rao for a sum of Rs. 15,000/- and as the decretal amount was not paid within a reasonable time after the date of the decree, Soma Raju filed an execution petition and got the wet land of Kantha Rao attached. While the attachment was subsisting and steps were being taken for auction of the attached land in court, Kantha Rao sold the very same land to Rajanna, and possession of the land was also delivered to Rajanna by Kantha Rao. Whether the said sale by Kantha Rao in favour of Rajanna during the subsistence of attachment is valid?

- * Under Section 64, C.P.C., where an attachment has been made, any private transfer or delivery of the property attached shall be void as against all claims enforceable under the attachment. So, the sale of attached land by Kantha Rao to Rajanna is void.

23. Kamalakara Rao has got vast properties. He has two sons through his first wife. As his first wife died, he married another lady. Kamalakara Rao kept a sum of Rs. 1 lakh with his friend, Surya Rao. He did not execute any will. Kamalakara Rao died after some time without taking back the amount of Rs. 1 lakh from his friend. Surya Rao wanted to return the amount to the rightful persons. The second wife of Kamalakara Rao having

come to know of the deposit of Rs. 1 lakh with Surya Rao, brought an unregistered will purporting to be that of Kamalakara Rao and claimed the amount. The sons through the first wife of Kamalakara Rao also brought another will purporting to have been executed by their father. Both the wills appear to be forged and fabricated wills. Surya Rao does not want to keep the amount with him. What is to be done by Surya Rao?

- * Under Section 88, C.P.C., where two or more persons claim adversely to one another the same sum of money from another person who claims no interest therein, and who is ready to pay it to the rightful claimant, that person may institute a suit of interpleader against all the claimants for the purpose of obtaining a decision as to the person to whom the payment shall be made and of obtaining indemnity for himself. So Surya Rao can file a suit in the civil court and obtain a decision from the court and abide by the decision of the court.

24. Janardhana Rao and Prakasa Rao were residing in side by side houses and were the owners of the respective houses. Janardhana Rao made an attempt to demolish the eastern boundary wall saying that Prakasa Rao encroached upon his site. Prakasa Rao objected for it saying that he purchased some site on the eastern side from the father of Janardhan Rao and on the site so purchased he constructed the boundary wall. Without hearing him Janardhan Rao filed a suit and obtained an interim injunction and under the guise of the injunction he got demolished the entire boundary wall. During trial of the suit, Prakasa Rao filed the sale deed executed by the father of Janardhana Rao for the site which was alleged to have been encroached. On the basis of the said sale deed, the court dismissed the suit filed by Janardhana Rao. Whether the court can grant any compensation for obtaining injunction on insufficient grounds against Janardhana Rao payable to Prakasa Rao?

- * Under Section 95, C.P.C., where in any suit in which an injunction has been obtained, it appears to the court that such injunction was obtained on insufficient grounds and that there was no reasonable or probable ground for instituting the suit, the court may, upon the application filed by the defendant, award against the plaintiff such amount not exceeding Rs.1,000/- as compensation.

25. Abdul Sattar filed a suit against Razia Begum for recovery of Rs. 5,000/- due from her and obtained a decree and in execution of the said decree, the plaintiff, Abdul Sattar filed an execution petition for the arrest of the judgment debtor, Razia Begum: Can the court arrest Razia Begum in execution of the decree?

- * Under Section 56, C.P.C., the court shall not order the arrest or detention in the civil prison of a woman in execution of a decree for payment of money. So, Razia Begum cannot be arrested in execution of the decree for payment of money.

26. Sultan Begum, according to the custom and manner of her religion, is a 'Pardanasini' lady. Abdul Karim filed a suit for recovery of money against Rehana Begum based on a promissory note executed by Rehna Begum in which Sultan Begum is an attester. While the suit reached the stage of trial, the plaintiff, Abdul Kareem filed a petition to summon Sultan Begum to speak about her attesting the pronote. Sultan Begum is a 'Pardanasini' lady and she declined to appear before the court. What is the position?

- * Under Section 132 (1), C.P.C., women, who according to the customs and manners of the country ought not to be compelled to appear in public shall be exempt from personal appearance in court. So, Sultan Begum cannot be compelled to appear before the court for giving evidence. However, under sub-rule (1) of Rule 17 of Order 26, C.P.C., the plaintiff can file a petition for appointment of a Commissioner to examine Sultan Begum on commission.

27. Gopanna filed a suit against Rajanna for recovery of possession of Ac. 2-00 of wet land. The court ordered issuance of summons to the defendant, Rajanna. Gopanna got a false endorsement prepared to the effect that the defendant refused to receive the summons. Thereupon, the court ordered substituted service of notice by way of publication in a local paper, viz., Amara Vani. It was not a paper which has got wide circulation. The defendant, Rajanna could not have known about the publication in the paper also and he had no knowledge about the filing of the suit. After filing of the publication, the court made the defendant exparte and an exparte decree was passed. Thereupon, the plaintiff filed an execution petition for delivery

of the suit property. There also the plaintiff, Gopanna saw to that, notices were not served on the judgment debtor, Rajanna and after ordering substituted service, finally in the execution petition also Rajanna was set *ex parte* and delivery was ordered. When the Court Amin came to his land along with the plaintiff Gopanna, Rajanna came to know of all the mischief played by Gopanna and he immediately filed a petition to set aside the *ex parte* decree and having proved want of knowledge about the issuance of summons, the *ex parte* decree passed against Rajanna was set aside and trial was also proceeded and after trial, the suit filed by Gopanna for recovery of possession of the land was dismissed. Appeal filed by Gopanna was also dismissed. How to get back the property delivered to Gopanna under the guise of *ex parte* decree?

- * Under sub-section (1) of Section 144, C.P.C., where and in so far as a decree or an order is varied or reversed in any appeal, revision or other proceeding or is set aside or modified in any suit instituted for the purpose, the court which passed the decree or order, shall, on the application of any party entitled to any benefit by way of restitution or otherwise, cause such restitution to be made as will, so far as may be, place the parties in the position which they would have occupied but for such decree and for this purpose the court may make any orders including orders for the refund of costs and for the payment of interest, damages, compensation and mesne profits. So, under this section, Rajanna can file a petition for restitution of the property and also for mesne profits and thereupon, the court will order restitution of the property and also grant mesne profits against Gopanna.

28. Kondala Rao got two acres of wet land and he raised paddy crop thereon. His brother, Papa Rao was claiming that, that particular land was given to his share by his father during partition. Kondala Rao was claiming that it was his self-acquired property purchased after the partition. Registered notices were also exchanged between the parties. Papa Rao is proclaiming in the village that he will file a civil suit for permanent injunction and obtain temporary injunction and take away the crop. What is the remedy available to Kondala Rao?

- * Sometimes a party obtains an *ex parte* order on an application without informing the other party of his intention to make

such an application. Where a party, with a view to preventing such ex parte orders being passed, intimates to the court of his intention to have notice of an intended application by the adverse party, by filing an application under Section 148-A, C.P.C., which provides for a caveat which shall remain in force for a period of ninety days from the date on which it was lodged. So, Kondala Rao can file an application under Sec. 148-A, C.P.C., and after filing the application, the court will not pass an ex parte order against him in any suit or application that may be filed by Papa Rao and the court will issue notice of such application to Kondala Rao and after his appearance alone, the court will pass appropriate orders.

29. Ramakrishna is the real owner of the house situated in Warangal. As he is working at Hyderabad, he entrusted the management of the house to his brother, Madhava Rao, who is residing at Warangal, with liberty to him to give it on rent to a good tenant. The house is given on rent to Mohana Rao. Mohana Rao does not pay rents for about one year and he does not vacate the house. Then Madhava Rao files a suit for recovery of arrears of rent and for eviction of the tenant. He files the suit in his own name. On coming to know of the suit filed by Madhava Rao in his name in respect of the house for which Rama Krishna is the real owner, Ramakrishna wants to come on record. What is the way?

* Under Order 1 Rule 10, C.P.C., where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the court may, at any stage of the suit, if satisfied, order any other person to be added as plaintiff. So, Ramakrishna can file petition under Order 1 Rule 10, C.P.C., to implead him as 2nd plaintiff.

30. Poornachandra Rao is the owner of the house. He gave it to Bhushanam on a monthly rent of Rs. 500/-. Bhushanam did not pay rents continuously for a period of 1 1/2 years commencing from 1-7-1992. Poornachandra Rao filed a suit against Bhushanam for recovery of rents due from 1-1-1993 to 1-12-1993. He omitted to claim the rents due from 1-7-1992 to 31-12-1992. The suit was decreed. Then, he wanted to file another suit for the rents due from 1-7-1992 to 31-12-1992. It is permissible?

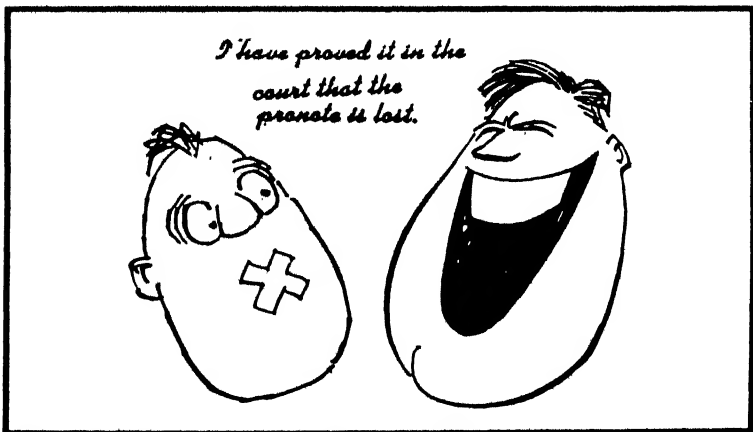
* Under Order 2 Rule 2, C.P.C., under sub-rule (2), where a

plaintiff omits to sue in respect of or intentionally relinquishes any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished. So, Poornachandra Rao cannot file a suit for the rents which he omitted to include in the earlier suit filed by him.

31. Mallanna filed a suit for recovery of a sum of Rs.5000/- from Apparao. The court sent summons to the defendant, Apparao through its officer but the summons could not be served as he was not available. The summons were affixed to his house. Thereafter, substituted service by way of publication was ordered by the court and the notice was published in a leading news paper. Even then, the defendant did not appear on the date of adjournment. Then the court made the defendant *exparte* and passed an *exparte* suit. After passing of the decree, Apparao came to know of the decree passed against him. Does he have to suffer the decree or is there a way for him to approach the court?

- * Under Order 9 Rule 13, C.P.C., in any case, in which a decree is passed *exparte* against a defendant, he may apply to the court to set it aside and if he can satisfy the court that the summons were not duly served, the court shall make an order setting aside the decree. Such petition shall be filed within 30 days from the date of knowledge. In the alternative, he can also file an appeal under Section 96, C.P.C., against the *exparte* decree.

32. Kasirao executed a promissory note in favour of Panakala Rao for a sum of Rs. 10,000/-, and obtained the said amount as



loan. Panakala Rao lost the promissory note. Kasirao did not pay the amount even though the period of limitation was fast approaching. What can Panakala Rao do?

- * Under Order 7 Rule 16, C.P.C., where the suit is founded upon a negotiable instrument and it is proved that the instrument is lost and an indemnity is given by the plaintiff, the court may pass such decree. So, Panakala Rao can file a suit against Kasirao and prove execution of promote by leading oral evidence.

33. Sudhakar Reddy filed a suit for permanent injunction against his cousin, Rama Subba Reddy restraining him from interfering with his possession and enjoyment of the land measuring Ac. 1-50 cents. He also filed a petition under Order 39 Rule 1, C.P.C., for a temporary injunction. In support of his claim, the plaintiff, Sudhakar Reddy filed cist receipts, certified copies of No.2 Adangal and other revenue records. He also filed sworn affidavits of the neighbouring land owners. The defendant also filed some cist receipts and third party affidavits. Each party alleges that the affidavits filed by the other do not contain correct facts. What is the value of the third party affidavits?

- * Under Order 19 Rule 1, C.P.C., any court may order that any particular fact may be proved by affidavit of any witness and where it appears to the court that either party bona fide desires the production of a witness for cross-examination such witness can be directed to be produced. The affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove the facts. Under Order 39 Rule 1, C.P.C., where in any suit it is proved by affidavit that the property in dispute is in danger of being wasted, damaged or alienated by any party to the suit or the defendant threatens to dispossess the plaintiff etc., the court may grant a temporary injunction.

34. Sugunakara Rao filed a suit for declaration of his title and for possession of the plaint schedule Ac. 2-00 of wet land against the defendant, Haragopal alleging that the defendant was in wrongful possession of his land. In fact, that defendant Haragopal, the sole defendant, died long back. After filing of the suit, he came to know of the death of the defendant and the plaintiff, Sugunakara Rao filed a petition under Order 22, C.P.C., to bring

the L.Rs. of the deceased, Haragopal on record. It is barred by limitation also. What is the position?

- * Under Rule 4 of Order 22, C.P.C., where a sole defendant dies and the right to sue survives, the court on an application made in that behalf shall cause the legal representatives of the deceased defendant to be made a party and shall proceed with the suit. Where the plaintiff applies after the expiry of the period of limitation as he was ignorant of the death of the defendant and could not make an application for the substitution of the legal representative of the defendant within the period of limitation and where the plaintiff seeks for setting aside the abatement and also for condonation of delay under Section 5 of the Limitation Act, the court shall, in considering the application, has due regard to the fact of ignorance of the plaintiff. The suit filed against the sole defendant who was dead even by the date of institution of the suit was not void ab initio and could be continued against the legal representatives of the deceased defendant if his substitution was made within the period of limitation of the suit.

35. Hari executed a promissory note in favour of Giri for a sum of Rs. 10,000/-. Hari did not repay the amount borrowed by him even though the period of three years limitation was approaching. Then, Giri filed a suit and got the standing paddy crop of the defendant, Hari attached. Then the defendant, Hari immediately approached the court and deposited the entire suit amount in court and issued a notice of the said deposit to the plaintiff. Having received the notice, the plaintiff withdrew the amount but contested for costs of the suit. Whether the plaintiff is entitled to the costs of the suit?

- * Under Rule 1 of Order 24, C.P.C., the defendant at any stage of the suit can deposit in court the suit amount, after giving notice under Rule 2 to the plaintiff. Under Rule 3, the plaintiff will not be entitled to interest on the sum so deposited from the date of receipt of the notice. But as regards the costs, the court has to consider keeping in view the circumstances of the suit and which of the parties is responsible to blame for the litigation.

36. Lingayya has two sons; Bhanuprakash and Jagadish Kumar. Both were married. Lingayya has got vast ancestral

properties. Bhanuprakash died leaving his wife. She was not being looked after well by the joint family. She separated herself from the joint family. She claimed the share of her husband in the joint family, which Lingayya and his other son, Jagadish Kumar denied. She was advised to go to the court for partition of her husband's share, to which she is entitled. But she had no means to pay the court fee. Is there any remedy for her to file the suit?

- * Under Order 33 Rule 1, C.P.C., if any person who is not possessed of sufficient means to enable him to pay the court fee for the plaint in any suit that may be instituted by him, he can file a petition in the court for permitting him to file the suit in forma pauperis and after inquiry into the question whether or not a person is an indigent person, if it is proved in the affirmative, that person will be permitted to file the suit without court fee. So, the wife of Bhanuprakash can file a petition under Order 33 Rule 1, C.P.C., and if she can prove that she has no means to pay the court fee payable on the plaint, she will be permitted by the court to file the suit without court fee or fees payable for service of process.

37. On the petition filed by Bharathi, wife of Bhanu Prakash for permitting her to file the suit as an indigent person, after inquiry, the court permitted her to file the suit as an indigent person. Thereupon, she filed the suit without the necessary court fee and the plaint filed by her was registered and subsequent steps were taken up. After some time, the defendants came to understand that she possessed some gold and there was also cash in her bank account, which ran into some thousands. She concealed possession of cash and gold and obtained order from the court to the effect that she was an indigent person. Can the plaintiff be directed to pay court fee at that stage?

- * Under Rule 9 of Order 33, C.P.C., on the application filed by the defendant or of the Government Pleader, after giving notice of such application to the plaintiff, the court may order the plaintiff to be dispaupered and direct the plaintiff to pay the court fee. Under Rule 5 (c) of Order 33, C.P.C., where the plaintiff has disposed of any property fraudulently within two months next before the presentation of the application or in order to be able to apply for permission to sue as an indigent person, the court can reject the application for permission to sue as an indigent person.

38. Durga Prasad executed a promissory note in favour of Lakshmana Rao for a sum of Rs. 50,000/- having borrowed the said sum for his business. Durga Prasad was having one big building. He did not repay the amount within the time promised by him. On the other hand, he was making attempts and also taking steps to transfer the building in the name of his wife with intent to delay the payment of the amount due under the promissory note to Lakshmana Rao. He was also taking steps to leave India by taking a passport and was also purchasing air tickets to go to Arabian countries. Lakshmana Rao came to know of the intention of Durga Prasad. What can he do to get the amount due from Durga Prasad?

* Under Order 38 Rule 1, C.P.C., where at any stage of the suit the court is satisfied by affidavit or otherwise that the defendant with intent to delay the plaintiff or to avoid any process of the court or to obstruct or delay the execution of any decree that may be passed against him or is about to abscond or leave the local limits of the jurisdiction of the court or has disposed of or removed from the local limits of the jurisdiction of the court his property, the court may issue a warrant to arrest the defendant and bring him before the court to show cause why he should not furnish security for his appearance. Further, under Rule 5 of Order 38, C.P.C., where, at any stage of the suit, the court is satisfied by affidavit or otherwise, that the defendant with intent to obstruct or delay the execution of any decree that may be passed against him is about to dispose of the whole or any part of his property or is about to remove the whole or any part of his property from the local limits of the jurisdiction of the court, the court may direct the defendant within a time to be fixed either to furnish security in such sum as may be specified in the order to produce and place at the disposal of the court which may be sufficient to satisfy the decree or to appear and show cause why he should not furnish security.

39. Kumara Swamy filed a suit for permanent injunction against Santhanna restraining him and his men from interfering with his (Kumara Swamy's) possession and enjoyment of the plaint schedule Ac. 2-00 of land along with the standing paddy crop thereon. Though in the first instance, an *ex parte* injunction was granted, subsequently after the appearance of the defendant,

the temporary injunction petition was heard and having found prima facie case and balance of convenience in favour of the plaintiff and having found that irreparable injury would be caused to him if no injunction was granted, the court made the temporary injunction granted under Order 39 Rule 1 C.P.C., absolute. The defendant, Santhanna devised a plan and instructed his farm servant and his son to enter into the land and cut the standing paddy crop and they accordingly, cut the standing paddy crop in half of the land. Is there any remedy to Kumara Swamy?

Under Order 39 Rule 2 - A, C.P.C., in the case of disobedience of any injunction granted under Order 39 Rules 1 and 2, C.P.C., or breach of any of the terms on which the injunction was granted, the court may order the property of the person guilty of such disobedience or breach to be attached and may also order such person to be detained in the civil prison for a term, not exceeding three months. Under clause (2) of Rule 2A of Order 39, C.P.C., no attachment made shall remain in force for more than one year and if the disobedience or breach continues, the property attached may be sold and out of the proceeds the court may award such compensation to the injured party and shall pay the balance, if any, to the party entitled thereto.

4

THE CODE OF CRIMINAL PROCEDURE, 1973
(Act No. II of 1974)

- 40. *Power of Police Officer to arrest without a warrant*
- 41. *Attachment of property of absconding accused*
- 42. *Sale of attached properties of absconding accused*
- 43. *Appearance of accused after attachment of his properties*
- 44. *Search warrant*
- 45. *Detention for an unlawful purpose of a woman or a female child*
- 46. *Maintenance by father to his minor female child*
- 47. *Maintenance of step-mother by her step-son*

48. *Maintenance of a divorced wife*
 49. *Maintenance of father from his married daughter*
 50. *Steps to prevent effluents from the industries*
 51. *Appointment of a receiver*
 52. *Payment of compensation to the accused*
 53. *Trial of accused for an offence for which he was tried*
 54. *Person convicted of an offence can be tried for last mentioned offence*
 55. *Imprisonment or committal of person refusing to answer or produce document*
 56. *Consequences of non-attendance of a witness in obedience to summons*
 57. *Compensation to the complainant*
 58. *Compensation to persons groundlessly arrested*
 59. *Release of accused on probation of good conduct after admission*
 60. *Release of a woman accused on probation of good conduct*
 61. *Detention/remand period to be set off against the sentence of imprisonment*
 62. *Grant of anticipatory bail*
 63. *Power to restore possession of immovable property*
 64. *Taking cognizance even after expiry period of limitation*
 65. *Extension of period of limitation*
40. The Village Officer of Bodduru Village reported that Narasappa, who is a habitual receiver of stolen property has set up his residence in their village. Thereupon, the Station House Officer of Rajam Police Station, within whose P.S. limits that village is situated, made attempts to find out the antecedents of that person, Narasappa. One day, the Sub-Inspector of Police along with his staff raided the house of Narasappa and found that Narasappa was in possession of certain property and he could not explain how he got into possession of those items. Therefore, the Sub-Inspector of Police suspected the same to be stolen properties. On further interrogation, he gave some address which appeared to be false. The Police Officer reasonably suspects that the properties in the possession of Narasappa were stolen properties. He could not ascertain the true name and residential address of

Narasappa within twenty four hours and Narasappa failed to execute the bond with sufficient sureties. What can the Sub-Inspector do in those circumstances?

- * Under Section 41, Cr.P.C., any Police Officer may, without an order from a Magistrate and without a warrant, arrest any person in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing and under Section 42 also, when such a person refuses to give his name and address or gives a name or address which such officer has reason to believe to be false, such person may be arrested by such Police Officer and if the Police Officer cannot ascertain the name and address of such person within twenty four hours from the time of arrest, or if he fails to execute the bond or if so required to furnish sufficient sureties, such person shall forthwith be forwarded to the nearest Magistrate having jurisdiction.

41. Ramsingh along with his associates committed double murder and was absconding. Attempts made by the police for apprehending Ramsingh failed. The said fact was also brought to the notice of the Magistrate and Non-Bailable Warrant was also issued and it could not be executed, as he was absconding. His wife and son were attempting to sell away the moveable and immovable properties of Ramsingh by obtaining General Power of Attorney. What is to be done?

- * Under Section 82, Cr.P.C., if any person against whom a warrant has been issued has absconded, such court may publish a written proclamation requiring him to appear at a specified place and at a specified time, not less than thirty days from the date of publishing such proclamation. The proclamation shall be read in some conspicuous place of the village in which such person ordinarily resides, it shall be affixed to some conspicuous part of the house in which such person ordinarily resides and a copy thereof shall be affixed to some conspicuous part of the court house, and it shall also be published in a daily newspaper. Thereupon, the court may order attachment of the property belonging to the proclaimed person. Where at the time of the issue of the proclamation, the court is satisfied that the person in relation to whom the proclamation is to be issued is about to dispose

of the whole or any part of his property, the court may order the attachment simultaneously with the issue of the proclamation. The court can also appoint a receiver.

42. Ramsingh along with his associates committed double murder and was absconding. As all the attempts for the apprehension of Ramsingh failed, proclamation under Section 82, Cr.P.C., was issued and his properties were also attached under Section 83 and a receiver was appointed. Thereafter, objections were filed and after enquiry, they were rejected by the court. Even at that stage, Ramsingh did not appear. What can the court do with the attached properties?

- * If the proclaimed person does not appear within the time specified in the proclamation, the property under the attachment can be sold after the expiration of six months from the date of the attachment, under Section 85 (2) ,Cr.P.C.

43. Ramsingh along with his associates committed double murder and was absconding. As all the attempts for the apprehension of Ramsingh have failed, proclamation under Section 82, Cr.P.C., was issued and his properties were also attached under Section 83, Cr.P.C., and after following the procedure, the properties were also sold in public auction, under Sub-section (2) of Section 85, Cr.P.C., Thereafter, Ramsingh returned to his house and he was then arrested by the police. Having come to know that his properties were sold in public auction, he filed a petition under Sub-section (3) of Section 85, Cr.P.C., for payment of the sale proceeds to him on the ground that he did not abscond and he has gone to Punjab for avocation and that he could not come back immediately. What can the court do on such application?

- * Under sub-section (3) of Section 85, Cr.P.C., if, within two years from the date of attachment of the properties, the person whose properties are attached, appears voluntarily or is apprehended and brought before the court, and proves to the satisfaction of the court that he did not abscond or conceal himself for the purpose of avoiding execution of the warrant and if his properties so attached are sold, the net proceeds of the sale and the residue of the property attached shall, after deducting the expenses incurred, be delivered to him.

44. Gangulu, a notorious dacoit connected with several crimes was apprehended while he was in a drunken state, in the house of his paramour. After such apprehension, the police shifted him from one police station to another but he was not sent to judicial custody. His wife filed an application under Section 97, Cr.P.C., stating that her husband, Gangulu was wrongfully taken away from the house and detained without remanding him to judicial custody and he was being shifted from one place to another and ultimately, she requested for issue of a search warrant. What can the court do?

- * Under Section 97, Cr.P.C., if the court believes that any person is confined under such circumstances that the confinement amounts to an offence, it may issue a search warrant and the person to whom such warrant is directed may search for the person so confined and the person, if found, shall be immediately taken before a Magistrate who shall pass an order remanding him to judicial custody.

45. Vijaya and Sita are sisters. They have no children. One day, both of them find a baby crying by the side of a road near a dust bin. Vijaya fostered that baby. While so, Sita develops affection towards that baby. On the pretext of Diwali festival, Sita takes the baby to her house from the custody of her sister Vijaya, promising her to return the baby after some time. However, Vijaya and her husband bring back the baby to their house after one month. Thereafter, Sita gives a complaint to the police against Vijaya and her husband complaining that they kidnapped her adopted daughter. The police after registering a case takes away the baby from the custody of Vijaya and her husband and handed over the baby to the custody of Sita in the presence of mediators at the police station. What is the remedy available to both parties?

- * Under Section 98, Cr.P.C., where a woman or a female child under eighteen years has been abducted or unlawfully detained for an unlawful purpose, a District Magistrate, a Sub-Divisional Magistrate or a Magistrate of the First Class alone has to restore the child to proper custody. The Police Officer has no right to take away the girl from the custody of Vijaya and hand over the baby to Sita.

46. A land lord, by name Ramayya, lost all his properties in a civil suit. He preferred an appeal in the High Court, which was pending. He had one son, Krishna, aged about 20 years. He is a Graduate in Arts. As, Ramayya lost all his properties in litigation, the persons of his equal status are not coming forward to give their daughter in marriage to his son, Krishna. In the same village, another person, by name Subba Rao, who has some properties and who belongs to the same community of Ramayya, has a daughter, aged about 16 years, who studied upto S.S.C. Ramayya asked Subba Rao to give his daughter in marriage to his son. As Ramayya's family was once holding considerable properties, which are subject to litigation and he may succeed in the appeal pending in the High Court, Subba Rao agreed to give his daughter in marriage to the son of Ramayya and the marriage was performed. After the marriage, the girl went to her husband's house and started living along with her husband and parents-in-law. The appeal pending in the High Court was dismissed. As the family of Ramayya has lost everything, they have no sufficient means for their maintenance. What is the position of the lady, i.e., the wife of Krishna for her maintenance at that stage?

- * Under the proviso Section 125, Cr.P.C., a minor female child can claim maintenance from her father and the Magistrate may order the father of the minor female child to make such allowance until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means.

47. Ramesh married Suneetha and at the time of their marriage Ramesh received Rs. 1 lakh as dowry. Even though he received Rs. 1 lakh as dowry, he still pressed his wife to get more money. Suneetha begot two children and Ramesh underwent vasectomy operation. Unable to bear the ill treatment and harassment meted out to her by her husband, Suneetha committed suicide. After her death, the elders decided that it was not safe to keep the minor children with their father Ramesh and so they effected partition of the properties of Ramesh and the children were living with their grand parents. Ramesh married another lady within one year of the death of his first wife, Suneetha. Naturally, as he underwent vasectomy operation, he had no children through his second wife. Ramesh lost all his properties in a business and he also lost his health and died leaving no

property behind him. The second wife became a childless widow. As partition was effected even before her marriage and as the properties that fell to the share of her husband were sold away by her husband, she has no means for her livelihood. She could not ask her first wife's sons for money. In such circumstances, is she entitled to claim maintenance?

- * Under Section 125, Cr.P.C., the step-mother has no right to claim maintenance. However, the explanation to Section 20 of the Hindu Adoptions and Maintenance Act defines 'parent' which includes a childless step-mother also. So, the step-mother is entitled to claim maintenance from her step sons under the Hindu Adoptions and Maintenance Act.

48. Lakshmayya married Seethamma. They had no children. As the doctors also confirmed that Seethamma could not beget children, Lakshmayya gave divorce to her through court. Seethamma is a pious lady. She performs Poojas and lives separately. After divorce, Lakshmayya married another lady by name, Savitri and through Savitri, Lakshmayya had two children and became financially sound and is leading a happy married life. However, the first wife, Seethamma is unable to maintain herself as she has no means of livelihood and no provision was also made at the time of divorce. As she is a pious villager, she felt that she could not approach her husband as already divorce was effected. She felt that she had no right to claim maintenance from her husband since there was no relationship of husband and wife between them. What is her remedy for maintenance?

- * So long as Seethamma, the first wife of Lakshmayya, who was divorced by her husband, remains unmarried and so long as she remains chaste, under Section 125, Cr.P.C., she is entitled to claim maintenance from her husband, Lakshmayya.

49. Kasi Rao has no male issues. His wife also died. He has one daughter Vijaya. She is a Medical Practitioner and is married. Her father, Kasi Rao filed an application for maintenance from his daughter, Vijaya as he is unable to maintain himself. He claimed maintenance at the rate of Rs. 500/- from his daughter, Vijaya. Is he is entitled to claim maintenance?

- * The Supreme Court, while interpreting clause (d) of sub-section (1) of Section 125, Cr.P.C., observed that in view of Section 8, I.P.C., read with Section 2 (y), Cr.P.C., the

pronoun 'his' in clause (d) of Section 125 (1), Cr.P.C., also indicates a female. Section 13 (1) of the General Clauses Act lays down that in all Central Acts and Regulations, unless there is any thing repugnant in the subject or context, words importing the masculine gender shall be taken to include females. Therefore, the pronoun 'his' as used in clause (d) of Section 125 (1), Cr.P.C., includes both a male and female. In other words, the parents will be entitled to claim maintenance from their daughter provided, the other conditions as mentioned in the section are fulfilled. Before ordering maintenance in favour of a father or a mother against their married daughter, the court must be satisfied that the daughter has sufficient means of her own, independently of the means of income of her husband and that the father or the mother, as the case may be, is unable to maintain himself or herself. In view of the above interpretation of the Supreme Court, the father Kasi Rao is entitled to claim maintenance from his married daughter on the fulfilment of the condition that the daughter has sufficient means of her own, independently of the means of income of her husband.

50. In Bheemavaram town, in a busy locality, two small scale industries have been set up. One is fish processing unit and the other one is leather industry and the effluents from these two industries flow through the city which is proved to be injurious to the health or physical comfort of the community. The inhabitants of the locality made written complaints to the authorities concerned which yielded no result. What is the remedy available to the inhabitants?

- * Under Section 133 (1) (c), Cr.P.C., whenever a District Magistrate or a Sub-Divisional Magistrate or any other Executive Magistrate, specially empowered in this behalf by the State Government, on receiving a report of a police officer or other information and on taking such evidence, if any, considers that the working of the industries is injurious to the health or physical comfort of the community, such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance or carrying on such trade or occupation to desist from carrying on such trade or occupation and if the Magistrate considers that immediate measures should be taken to prevent imminent danger or injury of a

serious kind to the public, he may under sub-section (1) of Section 142, Cr.P.C., issue such an injunction to the person against whom the order was made, to prevent such danger.

51. There is one Hanuman Vyayama Sala in Anakapalli town which is being organised by Yadavas. They have also installed Hanuman Deity in that area which is being worshipped by one and all. There are two groups in the Yadava Community and differences arise between the two groups in connection with the management of the Vyayama Sala. One group is supported by the ruling party and the other group is supported by the opposition party. There are frequent fights and disturbances between the two groups. The Sub-Inspector of police also is not in a position to control the situation which resulted in breach of peace. So the Sub-Inspector reports the matter to the Executive Magistrate. The Executive Magistrate initiated proceedings under Section 145, Cr.P.C. On enquiry by the Executive Magistrate, it is found that it was not possible to decide which of the parties was in possession of the Vyayama Sala. However, it was found that one party had wrongfully dispossessed the other one month prior to the date of the report to the Police Officer. He wanted to restore possession but that restoration was also found to be difficult. What has to be done?

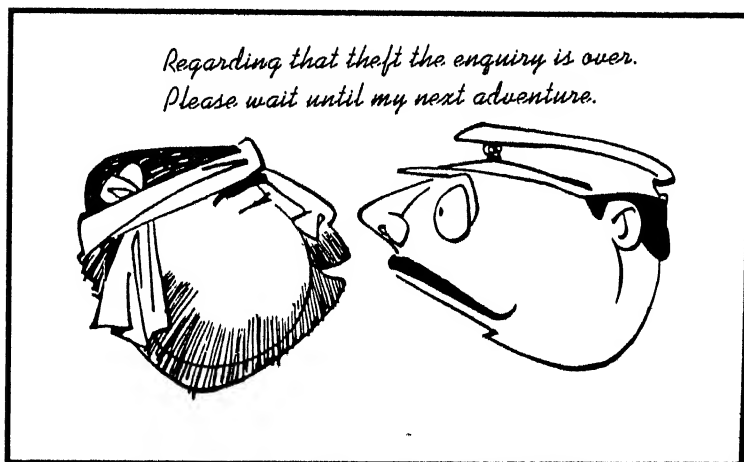
- * Each party is asserting its rights. If the Magistrate is unable to satisfy himself as to which of them was in such possession of the subject of dispute, he may attach the subject of dispute until a competent court has determined the rights of the parties, under Section 146, Cr. P.C. and a receiver can also be appointed to manage the said property.

52. Seethapathi has three daughters and a son and all his children are going to college. The friends of his daughters and son are frequently visiting his house. Subrahmanyam, who is residing in the neighbouring house, does not like several young boys and girls coming to a house, wherein, there are young and unmarried girls. He makes unfounded allegations against Seethapathi and his children stating that they are running brothel house and in that connection, several visitors are coming and going and with those allegations, Subrahmanyam files a complaint in the court. On enquiry, the Magistrate finds that they are all family members and friends keep visiting their

house and ultimately, the Magistrate acquitted all of them and finds that false allegations have been made against Seethapathi and his children. While acquitting the accused, can the Magistrate award any compensation for false accusation?

- * Under Section 250, Cr.P.C., if the Magistrate while acquitting the accused was of the opinion that there was no reasonable ground for making the accusation against the accused, the Magistrate may issue a notice to the complainant calling upon him to show cause why he should not be directed to pay compensation to such accused and after considering the representation made by the complainant in response to the show cause notice, if he is satisfied that there was no reasonable ground for making the accusation, he may direct the complainant to pay compensation to such amount not exceeding the amount of fine he is empowered to impose in default to undergo simple imprisonment for a period not exceeding thirty days.

53. Mangamma, a maid servant working in the house of Ratanlal, committed theft of a gold ring. Ratanlal suspected the maid servant and gave a complaint to the police. The police after investigation filed a charge sheet under Section 379, I.P.C. However, as there was no sufficient evidence against the accused-maid servant, she was acquitted of the charge under Section 379, I.P.C. Immediately after the acquittal of the case against the accused, the stolen ring was discovered in the house of the neighbour of Ratanlal and when enquired, the inmates of the



neighbouring house informed that Mangamma, the maid servant of Ratanlal sold it to them for Rs. 1,000/-. On this information, can the maidservant be tried again for the same offence?

- * Under sub-section (1) of Section 300, Cr.P.C., a person, who has once been tried by a court of competent jurisdiction for an offence shall not be liable to be tried again for the same offence nor on the same facts.

54. Kishore and Jagan entered into a Bar in Bombay and drank heavily and then came out of the Bar in semi-conscious state. While going on the road, Kishore said something about the conduct of Jagan's wife and that turned into a fight between them and Kishore took out a pen knife and stabbed Jagan with that knife in his stomach. Immediately Jagan was admitted in a hospital and the police came into the picture and ultimately, a charge sheet was filed against Kishore for an offence under Section 326, I.P.C., for causing grievous injury with the knife to Jagan. After trial, Kishore was convicted for the said offence and sentenced to undergo three years R.I. The above trial and judgments were completed within one month during which period the injured Jagan was undergoing medical treatment in the hospital. One month after the conviction, Jagan died due to the injury inflicted by Kishore. Whether Kishore can be tried again for the offence under Section 302, I.P.C.?

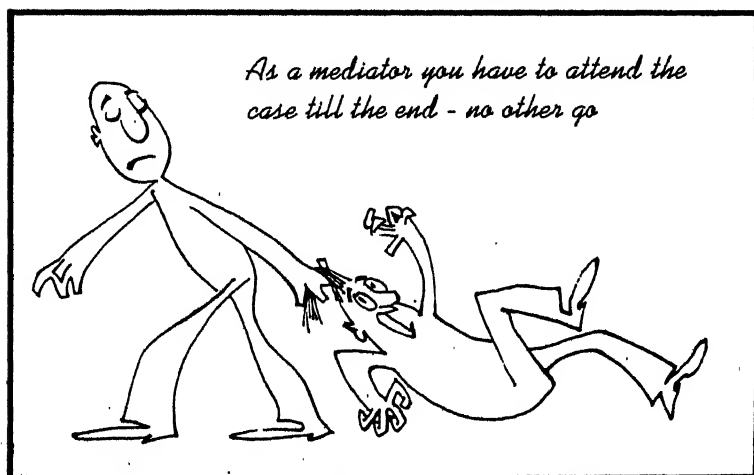
- * Under sub-section (3) of Section 300, Cr.P.C., a person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last-mentioned offence if the consequences had not happened or were not known to the court to have happened at the time when he was convicted.

55. Padmanabham is working as Manager in Andhra Bank for the last six years. He has misappropriated some amount and in that connection, a criminal complaint has been filed against Padmanabham for an offence under Section 409, I.P.C. for criminal breach of trust. During trial, it came to light that one important register showing the entrustment of the disputed amount to the Branch Manager, Padmanabham was in the custody of the Deputy Manager of the same Bank. The Public Prosecutor files a petition for summoning that book from the

Bank. Though the Deputy Manager received the summons, he does not produce the book. Reasonable opportunity is given to the Deputy Manager to produce the register. Despite that, he refuses to produce the register which is in his custody. Can any action be taken against the Deputy Manager?

- * Under Section 349, Cr.P.C., if any witness or person called to produce a document before a criminal court, and if he refuses to produce that document which is in his possession even after reasonable opportunity is given to him, the court may, for reasons to be recorded in writing, sentence him to simple imprisonment or by warrant commit him to the custody of an officer of the court for any term not exceeding seven days unless, in the meantime, such person consents to produce the document and in the event of his persistent refusal, he may be dealt with according to the provisions of Section 345 or 346, Cr.P.C.

56. Srikanth was working as Revenue Inspector in the Mandal Revenue Office. Several complaints were received against him for bribery. One of the affected parties reported to the A.C.B. Inspector about the demanding of bribe from him for recommending grant of licence. Thereupon, the A.C.B. party trapped Srikanth in the office of the M.R.O. and one clerk, by name Ramarao working in the same office acted as a panch witness for the entire transaction. Subsequently, after investigation, charge sheet was filed against the Revenue Inspector in the A.C.B. Court and during trial, summons were



issued to Ramarao, for giving evidence. In spite of issuance of several summons, B.Ws. and N.B.Ws., he refused to attend the court. What has to be done?

- * Under Section 350, Cr.P.C., if any witness being summoned to appear before a Criminal Court is legally bound to appear in obedience to the summons and without just excuse neglects or refuses to attend the Court, and if the Court is satisfied that it is expedient in the interests of justice that such a witness should be tried summarily, after giving an opportunity sentence him to fine not exceeding one hundred rupees.

57. There is one Subrahmanya Udiipi Hotel, in Guntur. Gangulu, one local goonda, went into that hotel and had his breakfast and after finishing it, he walked out without paying the bill at the cash counter. When he was asked for the bill amount, he beat the person in charge of the cash counter severely and threw away the glass pieces upon him which ultimately resulted in grievous injuries to that person and he also lost one tooth. He had to spend about Rs. 5,000/- towards medical expenses for treatment of the injuries. After the incident, a case was registered by the local police and after investigation, charge sheet was filed against Gangulu. After trial, Gangulu was convicted for the offence under Sections 325 and 326, I.P.C. and sentenced to undergo imprisonment for two years and also to pay a fine of Rs. 2,000/-. Can the Criminal Court while sentencing the accused, grant any compensation to the defacto complainant?

- * Under Section 357, Cr.P.C., when a court imposes a sentence of fine while passing the judgment, the Court can order the whole or any part of the fine to be paid to the defacto complainant as compensation for any loss or injury caused to him.

58. Janardhana Rao and Prahlada Rao are neighbours. Both are well-to-do persons. They have good relations also. Janardhana Rao has a daughter who is studying B.A. and Prahlada Rao has a son who is working as an Engineer in E.C.I.L. Janardhana Rao requests Prahlada Rao to give his son in marriage to his daughter to which Prahlada Rao does not agree. On account of the refusal of the marriage alliance, differences arise between the two families. To cause disrepute to the family of Prahlada Rao, Janardhana Rao gives a complaint against the family members of

Prahlada Rao alleging theft of one gold necklace. On the basis of the said complaint, while Prahlada Rao is amidst several guests and relatives some of whom are also high dignitaries, police come to his house and search the house for the stolen necklace, and arrest the nephew of Prahlada Rao, who is residing with him. The police arrests the nephew of Prahlada Rao in the presence of the guests and relatives. Subsequently, the allegations of theft made by Janardhana Rao are proved to be false. Can any compensation be granted by the court to the nephew of Prahlada Rao?

- * Under sub-section (1) of Section 358, Cr.P.C., whenever any person causes a police officer to arrest another person, if it appears to the Magistrate by whom the case is heard that there was no sufficient ground for causing such arrest, the Magistrate may award such compensation, not exceeding one hundred rupees to be paid by the person so causing the arrest to the person so arrested. If the compensation so awarded cannot be recovered, under sub-section (3) the person by whom it is payable shall be sentenced to simple imprisonment for such term not exceeding thirty days as the Magistrate directs unless such sum is sooner paid.

59. Suryanarayana and Prakasa Rao, aged 22 years and 18 years respectively were tried for the offence under Section 379, I.P.C., for having committed the offence of theft of one gold ring, weighing about half a tola. Both the persons went to the house of their friend, Mahesh Babu and as Mahesh Babu was stated to be having bath, they waited in the drawing room of the house. While they were sitting in the drawing room they found one ring on the table, which both of them took away and left the house without telling anybody. Subsequently, on a complaint given by Mahesh Babu, on investigation by Police the ring was recovered from Suryanarayana and ultimately, both Suryanarayana and Prakasa Rao were charge-sheeted and in the court they admitted the offence and consequently, they were convicted for the offence under Section 379, I.P.C. As regards the sentence, they submitted that this was their first offence, as they were badly in need of money for payment of hostel fees, which the hostel warden was demanding on threat of stoppage of meals. It was only under such circumstances, they committed the theft and so they requested the court to let them off as first offenders. Can the court do so?

- * Under Section 360, Cr.P.C., when any person not under twenty-one years of age is convicted of an offence punishable with fine only or with imprisonment for a term of seven years or less or when any person under twenty one years of age or any woman is convicted of an offence not punishable with death or imprisonment for life and no previous conviction is proved against the offender, if it appears to the court, regard being had to the age, character or antecedents of the offender and to the circumstances in which the offence was committed, that it is expedient that the offender should be released on probation of good conduct, the court may, instead of sentencing him at once to any punishment, direct that he may be released on his entering into a bond with or without sureties to appear and receive sentence when called upon during such period, not exceeding three years, as the court may direct and in the meantime to keep peace and be of good behaviour.

60. Ramulamma is working as servant maid in the house of Narasimha Rao. One day, the daughter of Narasimha Rao places her gold chain on the table in her bed room and goes to the bath room for taking bath. At that time, Ramulamma comes to sweep the room of the daughter of Narasimha Rao and finds the gold chain and takes it away. After completing her bath, the daughter returns to the room and finds the gold chain missing. Then a complaint is given in the police station suspecting the maid servant, Ramulamma. The Police registers a case and during investigation, the chain is recovered from the house of Ramulamma. A case is filed against her and on her admission, she is convicted by the court for the offence under Section 379, I.P.C. As regards the sentence, when questioned, she stated that she is a very poor lady, aged about 50 years and she is a widow having three small children and as she is unable to give them proper food, on seeing the chain in the room, she committed the theft of the same and she ultimately requested the court to let her off earlier and also stated that she did not commit any offence earlier and assured the court that in future, she will not repeat the same. Can the court let off the woman?

- * Yes. Under Section 360, Cr.P.C., when a woman is convicted of an offence not punishable with death or imprisonment for life and no previous convictions are proved against her, if it appears to the court, regard being had to the age, character or

- antecedents of the offender and to the circumstances in which the offence was committed that it is expedient that the offender should be released on probation of good conduct, the court may, instead of sentencing her at once any punishment, direct that she may be released on her entering into a bond with or without sureties to appear and receive sentence when called upon during such period, not exceeding three years, as the court may direct and in the meantime, to keep peace and be of good behaviour.

61. Pradhan was convicted for the offence under Section 379, I.P.C., for having snatched a gold chain from the neck of a lady and he was sentenced to undergo rigorous imprisonment for two years and six months. He was in judicial custody for 25 days. Whether the period during which the accused was in judicial custody and the day on which the sentence was passed can be set off against the term of sentence imposed against him?

- * Under Section 428, Cr.P.C., the period of detention, if any undergone by the accused during the investigation, inquiry or trial of the same case and before the date of such conviction shall be set off against the term of imprisonment imposed on him on such conviction. Similarly, under Section 49, I.P.C., the day on which a sentence is passed on a prisoner shall be calculated as a whole day and it has to be excluded.

62. There are two factions in Ramannapeta. One party is led by the sitting Sarpanch, Devendra Goud and the other group is headed by Rama Murty, who is a defeated candidate for the post of Sarpanch. As the factions reached to a maximum extent in the village, there used to be quarrels in the village between Harijans and other people. One day, a quarrel ensued between a Harijan lady and a relation of the sitting Sarpanch at the well, which resulted into a big quarrel between the two groups and two persons belonging to Harijan community were killed by the people of the Sarpanch. A complaint was given by the son of one of the deceased persons, who was also injured, to the Sub-Inspector of Police stating that at the instance and active instigation and connivance of the Sarpanch, his people beat them and killed two of their men. The police were trying to arrest the persons against whom allegations have been levelled in the complaint. Devendra Goud did not participate in the incident. But still, he apprehends that he may be taken into custody basing

on the allegations made by the defacto complainant. What can he do to prevent arrest by the police?

- * Under Section 438, Cr.P.C., when any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction and the court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail, on such conditions as the court may think fit including a condition that the person shall make himself available for interrogation by a police officer as and when required; a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case; a condition that the person shall not leave India without the previous permission of the court or such other conditions as the court considers necessary.

63. Firoz Ahmed, who is a vagabond and a rowdy, ultimately turned into a land grabber. He found this profession profitable. In the course of his avocation, he forcibly occupied vacant site measuring 300 square yards belonging to Dr. Naseeruddin, who is temporarily residing at Saudi Arabia and it is being looked after by his General Power of Attorney, Mr. Mohd. Rafiakhani. The G.P.A. holder reported the matter to the police. After investigation, the police filed a charge sheet against Firoz Ahmed for trespass. Can the court restore possession of the site to the General Power of Attorney Holder?

- * When a person is convicted of an offence attended by criminal force or show of force or by criminal intimidation and it appears to the court that by such force or show of force or intimidation any person has been dispossessed of any immovable property, under Section 456, Cr.P.C., the court may order that possession of the same be restored to that person after evicting by force, if necessary, any other person who may be in possession of the property.

64. Kanakarao and Kailasarao are neighbours. There is a drainage stream flowing in front of the house of these two persons. In connection with the free flow of sullage water, a quarrel ensued between Kanakarao and Kailasarao in which Kanakarao threw the sullage water into the house of Kailasarao

and spoiled the books which are in the front portion of the house of Kailasarao. Thereupon, he consulted an advocate who advised him that a complaint can be filed against Kanakarao under Section 426, I.P.C., for mischief. In the meantime, Kanakarao came to know of the proposal of Kailasarao, to file a criminal complaint against him. He approached some elders and requested them to effect a compromise. The mediators called Kailasarao and asked him not to file the complaint for the time being as Kanakarao wanted to compromise on the matter. They said that they would call both the parties on one day and settle the dispute. Believing the elders, kailasarao requested his advocate not to file a complaint for the time being. The elders have been postponing the issue on some pretext or other. Like that three months passed. On the last day of the third month, which happened to be Sunday, which is a public holiday for courts, Kanakarao sent word to Kailasarao through the elders, to do whatever he likes in the matter and that he would not attend the compromise. As some of his half-knowledge friends told Kanakarao that the period of limitation of three months for filing a complaint under Section 426, I.P.C., has expired by that day, Kailasarao could not do anything as the complaint if any, will be time barred. Basing on this ill advice of his friends, he sent the above message. Under such circumstances, what is the remedy available to Kailasarao?

Under Section 471, Cr.P.C., where the period of limitation expires on a day when the court is closed, the court may take cognizance on the day on which the court reopens. So, Kailasarao can file a complaint immediately on the next day against Kanakarao.

65. Seethayya has two acres of dry land in which he raised groundnut crop. Ramayya has one acre of dry land on the western side of Seethayya's land. There are differences between these two. One day, when Seethayya was getting the groundnuts plucked by engaging some coolies, Ramayya brought about ten persons and picked up a quarrel with Ramayya saying, that the coolies of Seethayya are plucking out groundnuts standing on his land. Thereupon, all the ten persons including Ramayya trespassed into the groundnut field of Seethayya and spoiled the crop to some extent. In the meantime, some elders intervened and separated the parties. Thereupon, Seethayya wanted to file a criminal complaint against Ramayya and his people for trespass

and for causing mischief of his groundnut crop and he was going to an advocate. While he was going on a scooter driven by his friend, a bus coming opposite to them dashed against the scooter. The rider of the scooter as well as the pillion rider, viz., Seethayya received grievous injuries and they were admitted in the hospital. Seethayya was in a coma for a week and thereafter, as he received fracture to his leg and hand, he could not be discharged from the hospital and he was an inpatient in the hospital for three months. He was discharged from the hospital after three months and one week. Immediately after his discharge from hospital, he wanted to file the complaint. Whether he can file the complaint or whether the period of limitation comes in his way?

- * If the delay in filing of the complaint has been properly explained, under Section 473, Cr.P.C., any court may take cognizance of an offence even after the expiry of the period of limitation. So, Seethayya can file the complaint even after the period of limitation duly explaining the reasons for the delay.

5

THE CONSUMER PROTECTION ACT, 1986

(Act No. 68 of 1986)

66. Right of consumer against marketing of hazardous goods

67. Right of consumer in cases of unfair trade practices

68. Access of the consumer to variety of goods

69. Right of consumer to approach consumer forums

70. Right of consumer against unfair trade practices or unscrupulous exploitation

71. Education with regard to the remedies available to the consumer

66. Fast Food Centre, dealing in several types of foodstuffs, prepared a special variety of sweet and it contained many components which were prohibited under the Food Adulteration Act. Because of the colour and taste, it was attracted by many

persons and several persons purchased the same. Among those purchasers, Shankara Rao was also one. He purchased some quantity of that sweet and all his family members ate it. Immediately thereafter, all of his family members became unconscious and they were admitted in the hospital where, after giving timely medical treatment they could recover. Many other persons, who have taken that sweet, have also been admitted into the hospital. The doctors, who treated the patients, opined that it was only because of the sweet which they ate, they fell ill. Whether Shankara Rao, his family members and the other like persons have got any remedy against the shop keeper?

- * Under the Consumer Protection Act, 1986, one of the objects is protection against hazardous goods. That means the consumer has a right to be protected against the marketing of goods which are hazardous to life and property. If a consumer has been victimised into purchasing goods which have injured his person or property, he will have a speedy and effective remedy under the Consumer Protection Act, by way of claiming damages from the person responsible. As Fast Foods Centre has prepared the sweet in question which was purchased by Shankara Rao and several other customers who ultimately fell ill after taking the same and as the doctors also opined that it is because of that adulterated sweet they have fallen ill, Shankara Rao and the other like affected persons can claim damages under the Consumer Protection Act.

67. Bharani Hair Oil Company produced Mega Gandha oil and they had given advertisements in all papers and also wide publicity about the oil announcing that the said oil cures bald head and also gives vitality to the hair. Tempted by the advertisement, many persons who are bald and whose hair is falling out have purchased the said oil and applied the same on their heads. Ravi Sankar, a boy, aged about 25 years, who is still unmarried, purchases the oil as he has baldhead and uses it. Contrary to the advertisement, within a week of the applying of the said oil, some boils grow on the head and the remaining hair also starts dropping out. What is the remedy available to Ravi Sankar against the company?

- * In all cases of unfair trade practices, the consumer would have the option of either applying to the Monopolies Commission under the Monopolies and Restrictive Trade

Practices Act, 1969, or to the Forums constituted under the Consumer Protection Act, 1986. As the oil applied by Ravi Shankar, which was purchased by him from Bharani Hair Oil Company, has worked contrary to the advertisement and instead of curing baldness and promoting hair growth, some boils have grown up on the head and the remaining hair also started dropping, he can approach either the Monopolies Commission under the Monopolies and Restrictive Trade Practices Act, 1969, or to the Forums constituted under the Consumer Protection Act, 1986, and claim damages.

68. M/s Ashok Traders deal in wholesale business of soaps and cosmetics. There are several companies' soaps in the shop. A new product 'Priya Soap' has been introduced. Ramesh Choudary enters into that shop to purchase Cinthol soap. The Trader without showing Cinthol soaps, insists him to take the new product 'Priya Soap' and in spite of clear demand by the customer, the Trader refuses to sell the other companies' soaps except Priya Soaps. Is there any remedy available to the customer, Ramesh Choudary to proceed against the Traders?

- * The consumer will have access to variety and will be able to enjoy the benefit of competitive prices. This would require a certain degree of liberty of shop-keepers in selecting and stocking goods of choice. If a shop-keeper is making his customers helpless and is thereby leaving them with no choice but to buy goods of one kind only, the matter may be brought to the notice of the Monopolies Commission and the latter can examine whether the shop keeper himself tied up by a producer and if so, the commission may liberate him from the burden of his ties and restore to him choice as to stock in trade.

69. Rama Prasada Rao has purchased a T.V. Set. Within one month of his purchase, the T.V. set goes out of order and the dealer refuses to exchange the T.V. set. He wants to approach the Consumer Forum for the appropriate redressal. Can he approach the Consumer Forum?

- * The Central Council is charged with the responsibility of assuring to consumer that they would be heard as of right by the appropriate forums and the consumer will receive due attention and consideration from such forums. It is the duty

of the council so to organise and compose the different forums under the Act that an aggrieved consumer is heard as of right and receives due consideration at the hands of the appropriate redressal forums. As the Consumer Forum constituted under the Consumer Protection Act, 1986, is one of the forums for the redressal of the grievance of the purchaser, Rama Prasada Rao can approach the Consumer Forum for his grievance.

70. M/s. Prahlada Manufacturers have introduced a new powder 'Prahlada Sandalwood Powder' and they have been giving misleading and unscrupulous advertisements for the said powder. Contrary to the advertisements, the users of the powder complain about several side effects. Is there any remedy available to the consumer to proceed against the company?

- * The Consumer has been given the right to seek redressal against unfair trade practices or unscrupulous exploitation, which is object No. 5 of the Consumer Protection Act, 1986.

71. Yeswantha Rao purchased one T.V. set from M/s. S.D.M.Electronics. Within one month of the purchase of the set, the T.V. went out of order and the dealer refused to exchange the set. The customer Yeswantha Rao did not know about the forum constitute under the Consumer Protection Act, 1986, and if he goes to a civil court, he apprehends that he has to spend a lot of money towards court fee and advocate's fee and other incidental expenses which may, in his opinion, exceed the cost of the T.V. and so he kept quiet. What is the duty of the Forums to bring to the notice of the affected persons about the rights given to a customer under the Consumer Protection Act?

- * Where the people do not exercise their legal remedies, the system of remedies tends to become rusted. Hence, for the proper functioning of the legal system it is necessary that knowledge of the availability of a legal remedy should be so widely disseminated that people as a whole, become conscious of their rights. The Central Council has been charged with the responsibility to provide to the people proper education in terms of their remedies under the Consumer Protection Act, 1986. People's awareness is likely to prove a better tool for putting the trade on some level of discipline. So, the consumer must be given proper education about his rights under the Consumer Protection Act, 1986.

THE DISSOLUTION OF MUSLIM MARRIAGES
ACT, 1939

(Act No. 8 of 1939)

&

OTHER MOHD. LAWS

- 72. *Petition for dissolution of marriage on the ground of cruelty*
- 73. *Divorce on the ground of the husband being sentenced to imprisonment for 7 years*
- 74. *Divorce on the ground of husband's whereabouts not known for four years*
- 75. *Divorce on the ground of non-performance of matrimonial obligations for three years*
- 76. *Divorce on the ground of insanity of husband for two years*
- 77. *Divorce on the ground of leprosy or venereal disease of husband*
- 78. *Divorce on the ground of non-payment of maintenance for two years*
- 79. & 80. *Dower*
- 81. & 82. *Revocability of divorce*
- 83. *Delegated power to divorce*
- 84. *Divorce with mutual consent*
- 85. *Maintenance by divorced wife*
- 86. *Validity of marriage*
- 87. *Prohibited relationship for marriage*
- 88. *Iddat*
- 89. *Marriage of a male of female who has not attained puberty or who is a minor*
- 90. *Restitution of conjugal rights*
- 91. *Payment of deferred dower*
- 92. *Rights of wife to claim dower*

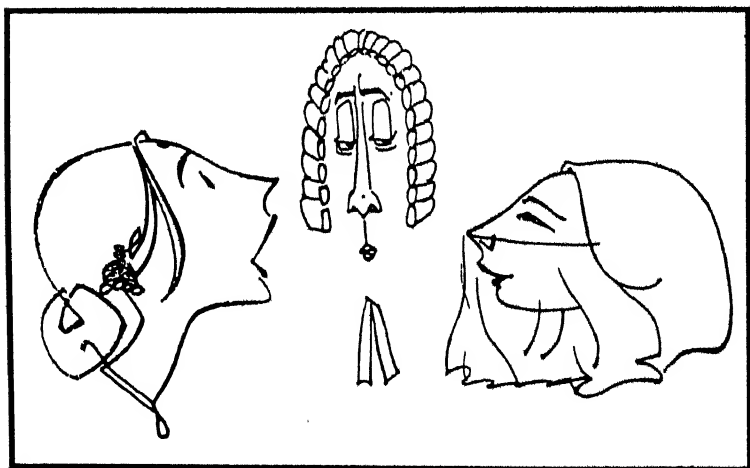
93. *Marriage of divorced wife*
94. *Custody of illegitimate children*
95. *Custody of children*
96. *Custody of wife who has not attained puberty*
97. *Alienation of minor's property*
98. *Creation of Wakf for the purpose of mosque and burial ground*
99. *Creation of wakf*
100. *Invalid alienations*
101. *Gift*
102. *Gift of property in possession of a trespasser*
103. *Gift of lost properties*
104. *Mode of gift*
105. *Pre-emption*
106. *Inheritance of properties*
107. *Rights of child in the womb to the properties*
108. *Alienation of property likely to vest in future*
109. *Inheritance of properties of step-father by a step-son*
110. *Shia Law-Sunni Law-Inheritance by illegitimate children*

72. Aziz Khan married Muntaj according to Muslim law. After the marriage, communal riots took place. Criminal cases were filed against the persons responsible for the communal riots and murders. One such case was also filed against Aziz Khan stating that he committed a murder and after trial, it was proved and Aziz Khan was sentenced to undergo imprisonment for a period of seven years under Section 304 Part I, I.P.C. In the jail, he was associated with hardened criminals and after his return from jail, he did not treat his wife Muntaj properly. He developed illicit connections with several women of evil repute and used to lead an infamous life. For the sake of money for his bad habits he even went to the extent of forcing his wife to lead an immoral life, to which she did not agree. She could not bear the cruelty. Under such circumstances, what is the remedy available to Muntaj?

- * The remedy available to Muntaj is to file a petition for dissolution of her marriage with her husband, Aziz Khan

under the Dissolution of Muslim Marriages Act, which was substituted by the Miscellaneous Personal laws (Extension) Act, with effect from 1st February 1960, alleging cruelty meted out to her, by her husband defined in Section 2 (iii), (viii) (a), (b) and (c) of the said Act. If she can prove the cruelty alleged by her, a decree for dissolution of marriage will be passed.

73. Razia Begum and Jhanshi Rani are close friends. Their marriages were performed as per their respective religious customs. Both the husbands of Razia Begum and Jhanshi Rani have jointly started a scheme offering many house hold articles like T.Vs., Fridges., Cycles, etc., on instalments, at lesser rates. Customers get attracted by the offers made and several persons joined in the scheme, paying initial amounts. All of a sudden on one night, they vacated the business premises and escaped. Thereupon, on the complaints given by the customers, cases were registered against the husbands of Razia Begum and Jhanshi Rani and chargesheet was filed and after trial, both of them were convicted for several offences and were sentenced to rigorous imprisonment for eight years each. Razia Begum and her friend, Jhanshi Rani were unable to bear the shame among their friends and in the public. They decided to give divorce to their respective husbands. Whether conviction and imposing sentence of 8 years R.I. is a valid ground for divorce?



* Under the Dissolution of Muslim Marriage Act, when a husband is sentenced to imprisonment for 7 years it is a valid

ground for the wife to ask for divorce. But under the Hindu Marriage Act, no such ground is available for a Hindu wife to give divorce to her husband. So, Razia Begum can give divorce to her husband but Jhansi Rani cannot give divorce to her husband.

74. Ismail and Parthasarathi are neighbours. Both were married and living happily with their respective families. Some communal disturbances took place and during that time both Ismail and Parthasarathi were taken away forcibly by some goondas. After the communal disturbance subsided, complaints were given about the missing of Ismail and Parthasarathi and their whereabouts were not known inspite of best efforts by the police. Even though five years passed like that, their whereabouts were not known. The wives of Ismail and Parthasarathi decided to remarry by giving divorce to their respective husbands. Can they file petitions for divorce?

- * Under the Dissolution of Muslim Marriage Act, if husband's whereabouts are not known for four years it is a ground for obtaining divorce by his wife. Under the Hindu Marriage Act, if either of the spouse's whereabouts are not heard of for 7 years, it is a ground for obtaining divorce by the other spouse. In the above case, as the whereabouts of Ismail, who is governed by the Muslim Marriage Act, are not heard for the last five years, his wife can validly obtain divorce and remarry. But in the case of the wife of Parthasarathi, who is governed by the Hindu Marriage Act, unless the whereabouts of the husband are not heard of for 7 years, his wife cannot obtain divorce. In the above case, only five years passed and his whereabouts are not known, so his wife cannot obtain a divorce and consequently, she cannot validly remarry.

75. Meenakshi, who is a Hindu lady and Fareeda Begum, who is a Muslim lady, are friends. Both were married according to their respective religions. The husbands of both the friends were business men and were very busy and they were always on camps and they did not perform their matrimonial obligations for three years. Their respective wives vexed with their respective husbands, decided to apply for divorce. Can they obtain divorce?

- * Under the Dissolution of Muslim Marriage Act, husband not performing matrimonial obligations for three years is a ground

for obtaining divorce by his wife. As the husband of Fareeda Begum has not been performing his matrimonial obligations for the last three years Fareeda Begum can validly obtain divorce from the court. No such ground is provided under the Hindu Marriage Act, for obtaining divorce by the wife and so, Meenakshi cannot file a petition for divorce on that ground.

76. Fouzia Beebi and Ramasundari are friends and both were married. But unfortunately, the husbands of Fouzia Beebi and Ramasundari are insane right from the date of marriage and their insanity is not cured even after two years. Both the friends, Fouzia Beebi and Ramasundari have decided to obtain divorce and remarry. Can they obtain divorce on the ground of insanity?

* Under the dissolution of Muslim Marriage Act, insanity of the husband for two years is a ground for the wife to obtain divorce. As the husband of Fouzia Beebi was insane for the last two years, she can obtain divorce from the court and remarry. But under the Hindu Marriage Act, there is no time limit of two years, for any insanity. However, mental disorder or sort of insanity, e.g., schizophrenia is a ground for divorce. If Ramasundari can prove any of the above insanities of her husband, irrespective of the period, she can obtain divorce. Other wise, she cannot obtain divorce.

77. Two cases for divorce under different Acts have come up before the court for consideration. One is filed by a Muslim lady under the Dissolution of Muslim Marriage Act and the other is by a Hindu lady for divorce under the Hindu Marriage Act. Both the petitions are based on the ground of leprosy and venereal disease of the husband. Can the petitions be allowed and divorce be granted on the above said ground?

* Under the Dissolution of Muslim Marriage Act, leprosy or venereal disease of the husband is a sufficient ground for obtaining divorce by the wife, but under the Hindu Marriage Act virulent and incurable leprosy or venereal disease must be proved to be in a communicable form. Unless it is proved that such disease is in a communicable form, the wife cannot get divorce.

78. Mohd. Farooq married Sabina Begum. Some time after the marriage, he fell in love with his colleague and began to illtreat

and neglect his wife and also drove her out of his house. The wife was forced to live in her parents' house. Her husband was not providing her any maintenance. Though more than two years passed, her husband did not take her back nor did he pay any maintenance. Can Sabina Begum apply for divorce?

- * If the wife was not maintained for two years, she is entitled to divorce.

79. Abdul Karim married a Hindu lady, Radha. There were no witnesses to the marriage. Subsequently, a son was born to them. Is the wife, Radha entitled to dower? What is the position of the son born to them?



- * A marriage is irregular (fasid marriage) when it is contracted without witnesses or with a woman of non-kitabia religion, e.g., with a Hindu woman. The wife can claim the specified dower or proper dower, whichever is less. The children of an irregular marriage are legitimate.

80. Mahommood Khan has married Razia Begum having four living wives already and when the bar of unlawful conjunction exists. What is the effect of the marriage?

- * A marriage is irregular when it is contracted by a person having four wives and when the bar of unlawful conjunction exists. The wife can claim the specified dower or proper dower

whichever is less and the children born out of such irregular marriage are legitimate.

81. Abdul Sattar married Muntaz Begum. After some time, the husband, Abdul Sattar wanted to give divorce to his wife. How can it be done? Can such a divorce be revoked?

- * The husband can at any time if he has attained puberty and is of sound mind, divorce his wife by pronouncement of single talak during a tuhr, i.e., the period between two successive menstruations. The divorce becomes irrevocable on the expiration of iddat. A second mode of oral divorce (Talak Hasan) (Proper divorce) consists of three pronouncements, one at a time during 3 successive tuhrs and this becomes irrevocable on the third pronouncement.

82. Amjad Khan married Ameena Begum. After some time, Amjad Khan wanted to give divorce to his wife and he preferred the second mode of oral divorce (Talak Hasan) by three pronouncements. After pronouncement, twice during two successive tuhrs, and even before third tuhr the husband, Amjad Khan resumed sexual intercourse with his wife Ameena Begum. What is its effect?

- * It is deemed that it is revoked.

83. Habibur Rehman Khan married Lalit Begum as per their Muslim custom. After some time, the husband delegated to his wife his power to divorce her. The wife stipulated for a right of divorcing the husband in specified contingencies, e.g., if he remarries without her consent or does not send her to her father's house or treats her cruelly. Subsequently, contrary to the stipulations, the husband remarried without the consent of his first wife, Lalit Begum, and did not send her to her parents' house and was treating her cruelly. In such circumstances, can the wife give divorce to her husband, pursuant to the delegation of power by her husband?

- * When the husband has delegated to his wife his power to divorce her and when any of the specified contingencies stipulated by the wife, viz., if he remarries without her consent or does not send her to her father's house or treats her cruelly, the wife can divorce the husband in pursuance of a delegated power, which is called Talak by the Tafweez.

84. Mohd. Yusuf married Fatima according to Muslim law. After some time, Fatima developed dislike towards her husband and she entertained an idea of leaving her husband, Mohd. Yusuf and re-marrying a more charming and handsome man, having good employment. She expressed her desire to her husband and wanted to terminate her marital obligation with him. The husband put a condition of not enforcing her claim for dower for giving divorce and the same was agreed by the wife. Can divorce be effected by agreement?

- * There can be divorce by agreement between the husband and wife. When the wife is desirous of terminating her marital obligations and when the husband puts a condition of not enforcing her claim for dower and she agreed to that and obtained her husband's consent for her release from the marriage tie, which is called Khula, and when the husband and wife thus mutually desire a separation they can enter into a bargain and put an end to the marriage, the wife can give divorce to her husband.

85. Abdul Rahim is having vast property. He has married Sakina Begum as per Muslim law. After some time, the husband, Abdul Rahim used to illtreat her, refusing to provide food, clothing and lodging and she is completely neglected. They have a son and a daughter. They are also not treated by their father, Abdul Rahim properly and they are also denied proper food and clothing. Unable to bear with the illtreatment meted out by Abdul Rahim, his wife, Sakina obtained divorce and is living separately along with her children. Whether they are entitled to maintenance?

- * The husband is bound to maintain his wife and children. When the marriage is dissolved, maintenance should be provided to his wife during iddat. Sons should be maintained until they attain the age of puberty and daughters until they are married.

86. Sayeeda Begum, aged about 16 years, who has attained puberty, is given in marriage to Mustafuddin, who is aged about 50 years. The marriage was performed as per Muslim law by the Khaji. The relatives of the girl, who wanted to celebrate the marriage of Sayeeda Begum with the son of one of the relatives challenged the marriage of that girl with Mustafuddin, on the

ground that it is an invalid marriage, as the girl is below 18 years of age. On enquiry, it has come to light that dower amount was also fixed. What is the effect of the marriage of Sayeeda Begum as she is below 18 years of age?

- * Under Mohammedan law, a Mohammedan (male or female) who has not attained puberty is a minor. One of the essential conditions of a valid marriage is that the parties to the marriage (male and female) should have attained puberty. As Sayeeda Begum attained puberty prior to the marriage, the marriage is a valid marriage. However, the wife can exercise her option and repudiate the marriage before completing 18 years of age.

87. Rahmuddin married Samsunnissa Begum as per Mohammadan law. Rahmuddin was working in Wakf Board. In the same office, the widowed step-mother of the wife of Rahmuddin, by name Jameela Bai was also working. She was a fair and beautiful lady. Rahmuddin wanted to marry her. Is it permissible under Mohammedan Law?

- * Under Mohammedan law the parties to the marriage should not be within prohibited degrees of relationship. On the ground of blood relationship, i.e., consanguinity and on the ground of affinity, the wife's step mother is prohibited to marry her husband. Therefore, Rahmuddin cannot marry his wife's widowed step-mother as there is a prohibited relationship, between Rahmuddin and Jameela Bai.

88. Mohd. Sadiq married Zaheera Begum. Some time after the marriage, Sadiq died. At the time of her husband's death, Zaheera Begum was pregnant and she was running her third month of pregnancy. Thereafter she remarried another person Aziz Ahmad. What is the effect of that marriage?

- * A widow has to remain in seclusion for 4 months and 10 days from the death of her husband. If she is pregnant at the time of the husband's death and does not have delivery during this period, iddat lasts until delivery. During the period, iddat lasts until delivery. During the period of iddat, a woman should not marry. A divorced woman whose marriage had been consummated, i.e., who had sexual intercourse with the husband should observe seclusion for three lunar months. If she is subject to menstruation, the period is three menstrual

courses. When she is pregnant, iddat terminates upon delivery. As during the period of iddat a woman should not remarry, and as in the above case Zaheera Begum married Aziz Ahmad during the period of iddat, such a marriage is void.

89. Asifuddin is a boy aged about 15 years and has not attained puberty. Even though he did not attain puberty, his marriage is fixed. What is the effect of that marriage?

- * A Mohammedan (male or female) who has not attained puberty, (who is a minor) cannot directly contract a marriage. The intervention of the guardian is necessary for performing the marriage of a Mohammedan who has not attained puberty. However, option of puberty is the right of a Mohammedan to repudiate his or her marriage which had been performed before he or she attained puberty. The option of puberty cannot be exercised after the marriage has been ratified expressly or impliedly and there is implied ratification when the husband pays dower or cohabits or when the wife consents to consummation.

90. Siddiqui married Salma. At the time of marriage, dower amount has been fixed which is agreed to be paid on demand, which is otherwise called prompt dower. After some time, there is a demand by the wife for payment of dower amount. The wife refused to consummate the marriage until prompt dower is paid. However, on intervention of elders and on persuasion, the dower is agreed to be paid on a particular date and the wife is made to agree to have sexual intercourse with her husband. Even by the agreed date, the dower amount is not paid. Wife refused for further sexual intercourse. The husband files a petition for restitution of conjugal rights stating that there is consummation of marriage and that his wife has no right to make a demand for prompt dower. Whether a decree for restitution of conjugal rights can be passed by the court?

- * The petition filed by the husband for restitution of conjugal rights in the above circumstances can be decreed by the court conditionally, i.e., subject to the payment of prompt dower within a time fixed by the court. If the dower amount is not paid within the said period, the wife can enforce the claim through court within three years.

91. Abdul Jaleel married Aishabi. At the time of the marriage, deferred dower was fixed. Subsequently, Abdul Jaleel developed dislike towards Aishabi and ultimately, divorced her. But he did not pay the deferred dower. What is the remedy for the wife to get the deferred dower?

- * Deferred dower is payable on the dissolution of the marriage. No doubt, the husband under Mohamedan law enjoys an absolute power of divorcing his wife without assigning any reason. To deter him from exercising that right arbitrarily, deferred dower is usually fixed rather high. If there is no divorce, deferred dower becomes payable only on the death of the husband and it can be recovered within three years of the death of the husband. Otherwise, the claim becomes barred by limitation. If she is in possession of her husband's property for satisfying her claim to dower, there is no bar of limitation and she can realise her claim from the income of that property. The dower debt is an unsecured debt and the wife ranks as an ordinary creditor. She can secure a money decree from court within three years from the date the dower debt becomes due, i.e., from the date of demand in the case of prompt dower and from the date of divorce or from the date of death of her husband, as the case may be, in the case of deferred dower.

92. Mustafa Khan married Meena Sabida. The husband was impotent. But the wife was not aware of her husband's impotence at the time of the marriage. The marriage was not consummated. The husband did not like to apply to the court to grant him some time for regaining his manhood. The wife filed a petition for divorce and the same was granted by the court. What is the effect on the dower amount to which the wife is entitled? What are the other effects?

- * After the divorce, if the divorce was effected before consummation, the wife can claim half the dower. In the above problem, there was no consummation and so the wife is entitled to half the dower. In addition, she can claim maintenance during iddat or until Talak is communicated to her, whichever is later. The wife loses her right of inheritance to her husband. She can marry another after waiting for period of iddat. She can marry without such waiting if her marriage was not consummated.

93. Syed Hussain married Gulnaz. After some time, differences arose between the couple and ultimately, the husband gave divorce to his wife by means of triple talak. Some time thereafter, he realised his fault and wanted to remarry her. Can he remarry his wife after divorce?

* If the husband wants to remarry the divorced wife, he may do so even during iddat. However, where he had divorced by a triple Talak, i.e., irrevocable with immediate effect, there is a condition precedent to remarriage, viz., marriage of the divorced wife to another, consummation of that marriage and its dissolution. This stringent condition is intended to discourage hasty divorce. Cohabitation with the divorced wife without remarriage is unlawful and the children born would be treated as illegitimate.

94. Abdul Sattar married Rekha Beebi. As there was prohibited relationship between the two, their marriage was void. However, they begot one daughter. Some time after the birth of the daughter, differences arose between the couple and the wife left her husband and started living separately along with her daughter, who was aged five years. The father claimed the custody of the daughter. Who is entitled to the custody of the daughter.?

* Mohammedan law regards a person as a minor until he or she attains puberty. A female child till she attains puberty is to be in the custody of its mother. Thereafter, if the daughter is unmarried, her custody passes to her father. In the case of a son, till he attains 7 years of age, it is the mother who has the right to keep him in her custody. Thereafter, father has the right to keep him in his custody. When the child is illegitimate, it is the mother that is entitled to the custody irrespective of the fact whether the child has or has not attained puberty.

95. Abdul Kareem married Manzu. It is a valid marriage and a daughter was born to them. Some time after the birth of the daughter, differences arose between the couple and ultimately, it reached the stage of obtaining divorce from court. The girl was in the custody of her mother. When the girl was aged about 10 years the mother died. Is her father entitled to the custody of the daughter directly, even though she has not attained puberty?

* In the absence of the mother, female relatives viz., mother's mother, father's mother, full sister, uterine sister, consanguine

sister, daughter of full sister, daughter of uterine sister, daughter of consanguine sister, maternal aunt or paternal aunt, in the descending order of priority, have to look after her person keeping in their custody. When the girl has attained puberty and is unmarried or in the absence of any of the above mentioned female relatives though she has not attained puberty, the father is entitled to the custody of the daughter. In the absence of the father the male relatives become entitled to her custody, viz., paternal grand father, full brother, consanguine brother etc.

96. Syed Abbas married a girl Romania Beebi, who has not attained puberty. Normally a female child till she attains puberty is to be in the custody of its mother. Now she is married. Whether her husband, Syed Abbas is entitled to the custody of the girl?

- * Under Mohammedan law, the husband has no right to the custody of the wife till she has attained puberty. So, under the Guardian and Wards Act, the Court would regard the husband as unfit to be appointed as guardian of the person of the wife, who is minor. When the husband is regarded as unfit, any other qualified person having regard to the personal law applicable to the minor may be appointed by the court as such guardian. So it is mother that will be appointed as guardian of the minor girl till the girl attains puberty and not the husband.

97. Haji Hamid is a minor boy aged about five years. His maternal grand father bequeathed some properties under a will on this boy, Haji Hamid, which should come into operation after his death. When the boy is aged about 6 years, his maternal grand father dies and he becomes the owner of the properties. The boy is in the custody of his mother. Without any legal necessity, the mother sells away some of his properties, nominally mentioning in the sale deed that it is being sold for legal necessity of the boy. Can the minor boy question the alienation made by his mother?

- * No alienation of the property of a minor can be made without the prior permission of the court. However, the power of alienation can be exercised for purposes of legal necessity and legal benefit of the minor. The minor can question the alienation within three years of his attaining majority contending that the alienation is beyond the powers of the guardian and that it is not for legal necessity or benefit and

can ask the court for setting aside such sale. However, such sale is voidable but not void.

98. Mohd. Inthiazuddin has an undivided one-third share in Ac.6-00 of joint family dry land. Mohd. Inthiazuddin is a religious minded man and he created a Wakf over half of his undivided share for the purpose of construction of a mosque and the remaining half share for the purpose of a burial ground. Is the Wakf for the above two purposes over the undivided share valid?

- * Wakf for the purposes of mosque and burial ground over Mushaa, i.e., an undivided share in the property cannot be created and if created it is not valid.

99. Mohd. Yasin is a religious minded and pious man. He has some land and a house. He dedicated the land for construction of a mosque. He has reduced the Wakf into writing and as the value of the property dedicated is about Rs. one lakh, it is also registered. Subsequently the Wakif, Mohd. Yasin died. After the death of the Wakif, a dispute arises with regard to the validity of the Wakf created by Mohd. Yasin. What would be the effect of the Wakf created by Mohd. Yasin?

- * Wakf can be created orally or in writing. If it is reduced to writing and if the value of the property dedicated is Rs.100/- or upwards, it should be registered. As in the above case, the Wakf is created by a registered document and the purpose is a religious purpose, it is a valid Wakf.

100. Mohd. Sajid was appointed as a Mutawalli by the Wakif in respect of the property which was dedicated by the Wakif. The duties of the Mutawalli are management of the mosque and to maintain the same properly, he was also given the power to lease the lands dedicated for the maintenance of the mosque for a term not exceeding three years and should not grant permanent lease. Neither can he mortgage it nor exchange it for another property or sell it. In such a case, the Mutawalli should apply to the court for permission to sanction such a transaction. Contrary to the above powers, the Mutawalli was granted permanent lease in respect of some of the lands of the mosque and he also sold Ac. 1-00 of land belonging to the mosque. What is the effect of the alienations?

As the Mutawalli has exceeded his powers and contrary to his powers, he granted a permanent lease and also sold Ac. 1-00 of Wakf property, without the prior permission of the court, they are invalid and the invalid alienations can be set aside by the court at the instance of the beneficiaries under the Wakf. Further, under Section 92, C.P.C., any of the beneficiaries under the Wakf can approach the court for the removal of the Mutawalli on grounds of misconduct. The prime consideration is the interest of the public and when a Mutawalli has committed a breach of trust or has set up title in himself to the trust property, he can be removed.

101. Mohd. Nasecruddin has got one big house. He died leaving his wife and son. After the death of Mohd. Nasecruddin, his wife and son inherited the property, viz., the house which is not divisible. In such a case, can the mother make a gift of her share to her son?

* Yes. If the property inherited is indivisible, then either of the heirs can make a gift to the other of his or her undivided share.

102. Abdul Khader has some landed property which was unauthorisedly occupied by one land grabber. Abdul Khader filed a suit and it is pending. Abdul Khader has one son. He wants to gift that property to his son as he is getting old. Can Abdul Khader make gift of the property which is not in his possession?

* When the property is in the possession of a trespasser, the owner is not in a position to deliver possession. If the owner authorises the donee to take possession that would be treated as sufficient to support the validity of the gift.

103. Sadiq Ali has got some gold ornaments. He kept them in a small box and placed it in the almyrah. One day, theft took place in his house and several articles including the small box containing gold jewellery were stolen. Thereupon, Sadiq Ali gave a police complaint and a case was registered and it was under active investigation by the police. At that stage, Sadiq Ali fell ill. He has one son and a daughter. He wanted to make a gift of the lost gold jewellery, expecting its recovery. Can he make the said gift?



- * Gift of lost properties cannot be made as possession cannot be delivered and possibility of their recovery is in doubt.

104. Ashraf Khan has some immovable properties. He wants to gift the properties to his children. The value of the properties is more than Rs. 100/-. Can he orally declare the gift?

- * The provisions of the Transfer of Property Act relating to Gifts, do not apply to Mohammedans. The requirements of Section 123 of the Transfer of Property Act, need not be complied with by Mohammedan gifts. Under Mohammedan law, a registered instrument is not necessary. Delivery of possession is essential. So, Ashraf Khan can make oral gift without registration.

105. Mahaboob Khan is having easementary right over the water tank of Saffruddin, who is the owner of the tank. Mahaboob Khan wants to sell away his easementary right over the water tank to some other person. Saffruddin wants to purchase the easementary right of Mahaboob Khan on the principle of pre-emption. What is the position?

- * The requirements of pre-emption are the pre-emptor should be a Muslim and he should be the owner of the property. The right of pre-emption arises only when some other owner has sold the property. Saffruddin can claim pre-emptory right. However, it depends upon the nature of the particular easement

and the kind of inconvenience or danger to his rights apprehended by the pre-emptor.

106. Rahmatullah Khan has vast properties. He bequeathed his entire property to his paternal grand-father though he was having his son and father. After the death of Rahmatullah Khan, the other persons, viz., son and father, who were the heirs of Rahmatullah Khan, were not given any consent. What is the position?

- * The grand-father is excluded from inheritance by the father. So, the paternal grand-father is also not an heir. No doubt the legacy can be given to the paternal grand-father. But it should not exceed 1/3rd of the property. For the other 2/3rds share, the heirs should give their consent. If they do not consent, the legacy will take effect upon 1/3rd of the property only. The remaining 2/3 rds will be treated as available for distribution among the heirs, i.e., son and father.

107. Mirza Mohd. Khan got vast properties. He has a wife and a son and a daughter. He fell ill and was bed-ridden. There was apprehension of imminent death. So, he wanted to dispose of his properties by way of gift. At that time, his wife was pregnant, running fourth month. Mirza Mohd. Khan gifted the properties in favour of his near relation. Within five months of his death, a son was born to his wife. What is the effect of the gift to the relations?

- * Under Mohammeden law, it is necessary that the child should have been in utero at the time of the will and further should have been born within six months from the date of the will. A gift in favour of his near relations cannot take effect in respect of the entire properties of late Mirza Mohd. Khan. The gift will be valid only in respect of 1/3rd of the properties. However, if there is consent by the heirs of late Mirza Mohd. Khan for the gift of the remaining 2/3rds, that can also be given effect to. Otherwise, it cannot be given effect to the 2/3rds of his properties.

108. Mohd. Suleman has vast properties. He has three wives and one son through each wife. He has not executed any will. On his death, his heirs succeed to the property under the Muslim law. While so, one of the sons of Mohd. Suleman, who is entitled to a share in the properties, has alienated his interest, during the

life time of the original owner, Mohd. Suleman. Is the transaction valid?

- * While the owner is alive, the person who would succeed to the property on his death is an heir apparent and his right is a chance of succession. Such an interest is not alienable. It is not heritable. The estate vests in an heir only after the owner's death.

109. Rubena Begum has one son, Mohd. Khaja. Her husband is no more. Subsequently, she married Mohd. Ismail who had already got three wives and children through them. Three years thereafter, Mohd. Ismail died, leaving vast properties. After the death of Mohd. Ismail, Mohd. Khaja, who is the son of Rubena Begum through her first husband and who subsequently became the wife of the deceased Mohd. Ismail, claimed a share in the properties of his step-father. Whether he is entitled to any share?

- * A step-son cannot inherit the properties of his step-father. In the above case Mohd. Khaja born to Rubena Begum, through her first husband, becomes a step son to Mohd. Ismail and so, Mohd. Khaja has no right of inheritance to the properties of his step father.

110. Vaheeda Begum and Suneetha Begum are neighbours. Vaheeda Begum belongs to Shia sect and Suneetha Begum belongs to Sunni sect. Both are having illegitimate sons. Both the husbands of Vaheeda Begum and Suneetha Begum were involved in a scooter accident. While they were going on a scooter an on-coming lorry dashed against the scooter and both died on the spot. They left behind them, their respective wives and illegitimate children. They have got some properties. Whether the illegitimate children are entitled to the properties of their respective fathers?

- * Under the Shia law, the father takes the entire property and under the Sunni law, the father takes 1/6th share and the illegitimate son as residuary takes 5/6 th of the inheritance. The Shia law does not recognize the rights of an illegitimate child to inheritance at all, and an illegitimate child cannot inherit either through the mother or through the putative father.

THE DOWRY PROHIBITION ACT, 1961

(Act No. 28 of 1961)

- 111. *Punishment for demand of dowry*
- 112. *Agreement for giving or taking dowry - void*
- 113. *Right of wife to get back the presents given to her at the time of marriage*

111. Bharat has studied B.A. and after his education, he gets a job as a Clerk in Commercial Taxes Department. He is working as a Clerk at Rajahmundry. As he is unmarried, he gets several marriage alliances. His father's name is Janaki Ramayya. Seshavataram, a resident of Rajahmundry has a daughter, Vani. She has studied upto B.A. Seshavataram asks the father of Bharat to give Bharat in marriage to his daughter. Bharat's father demands a dowry of Rs. 50,000/- and some bargain takes place between them and ultimately it is agreed for Rs. 30,000/- and an amount of Rs. 10,000/- is given as part of the dowry one month before the marriage and another Rs. 10,000/- is paid at the time of the marriage and the balance of Rs. 10,000/- is paid within one month after the marriage. The amounts are paid in the shape of bank drafts drawn in the name of Janaki Ramayya, the father of the boy. After the marriage, Bharat and Vani lived together and after three months, Vani became pregnant. However, the girl died within nine months of the marriage due to advanced pregnancy. After the death of his daughter, Seshavataram demanded Janaki Ramayya for the return of the dowry. But Janaki Ramayya did not return. Is there any way for Seshavataram to get back the dowry amount paid? If so, what is it?

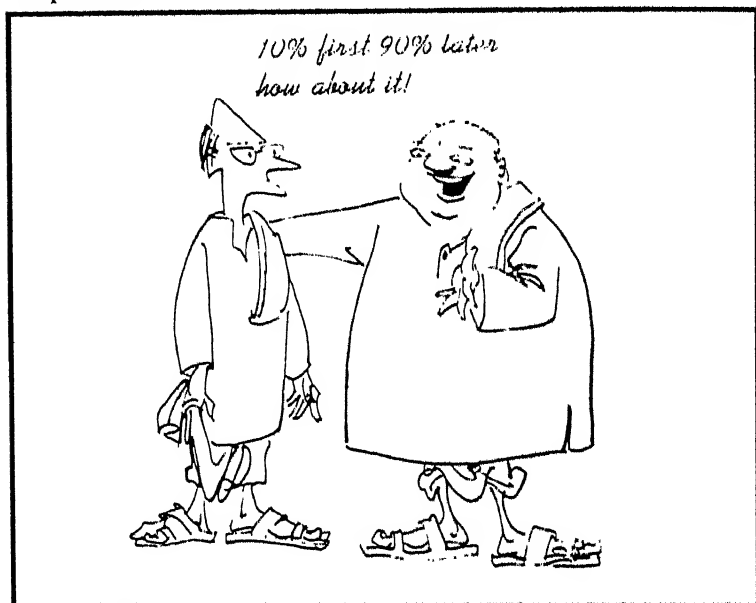
- * In fact, under Section 4 of the Dowry Prohibition Act, 1961, demanding of dowry itself is an offence and if any person demands directly or indirectly from the parents or guardian of a bride any dowry, he shall be punishable with imprisonment which may extend to six months or with fine which may extend to five thousand rupees or with both. However, as no



complaint is made against Seshavatharam it need not be taken into account hoping that the dowry amount will be given to his daughter, Vani. But in the above case the daughter of Seshavatharam died within nine months of her marriage. Under Section 6 of the Dowry Prohibition Act, where any dowry is received by any person that person shall transfer it to the woman within one year after the date of marriage. Under sub section (3) of Section 6, if the woman entitled to any property dies before receiving it, the heirs of the woman are entitled to claim it from the person holding it. Failure to repay dowry taken by the bridegroom or his father is an offence. So, Seshavatharam can file a petition before the First Class Magistrate for directing Janaki Ramayya to return the dowry.

112. Lakshmayya has a daughter Kalpana, who is aged 19 years. As Kalpana reached marriageable age, her father, Lakshmayya searches for a suitable match and ultimately approaches Ramachandra Rao who has got a son, Krishna Mohan, aged about 26 years and who is working as a Clerk in R.T.O Office. Ramachandra Rao demanded a dowry of Rs.50,000/- from Lakshmayya for the marriage. As Lakshmayya does not possess the said amount, and as he could secure

only Rs. 25,000/- by sale of his small piece of land. he pays that Rs. 25,000/- to Ramachandra Rao and agrees to pay the balance within one year. Ramachandra Rao agreed but insisted to execute an agreement to that effect and Lakshmayya accordingly executes the same. The marriage is performed and Kalpana and Krishna Mohan live as wife and husband in the house of Ramachandra Rao. Lakshmayya could not pay the balance of the dowry amount within the stipulated period to Ramachandra Rao. As the amount is not paid, Ramachandra Rao sends Kalpana to her parents house. Thereafter, Ramachandra Rao also issues a legal notice demanding the balance amount based on the agreement. What is the position?



- * Under Section 5 of the Dowry Prohibition Act, 1961, any agreement for the giving or taking of dowry shall be void. So, Ramachandra Rao cannot get any amount on the agreement entered into between Ramchandra Rao and Lakshmayya as it is a void agreement and Lakshmayya need not pay any amount under the agreement.

113. Haragopal married Suneetha as per Hindu rites and caste custom. Both are majors. Several visitors, viz., relatives and friends of both the bride and bridegroom attended the marriage and according to the custom they gave presents to the couple

without any demand. The presents were not of excessive value but they were according to the financial status of the persons concerned. Lists of the presents were also prepared and were signed by both the bride and bridegroom. Subsequently, differences arose between the couple which led to divorce effected by a court under Section 13 of the Hindu Marriage Act. What is the position of the articles or presents received at the time of the marriage?

- * The wife is entitled to get back the presents given to her at the time of her marriage as per the lists of presents prepared under Rule 2 of the Dowry prohibition (Maintenance of Lists of Presents to the Bride and Bridegroom) Rules, 1985.

8

THE ESSENTIAL COMMODITIES ACT, 1955

(Act No. 10 of 1955)

114. Seizure of essential commodities of contravention of the provisions of law

114. There is a fair price shop in Goutami Nagar. Siddayya Goud is the dealer of that fair price shop. As usual, the dealer has deposited the amount for the sugar and rice allotted to his shop and released the commodities and loaded them in a lorry. Instead of taking the lorry to the Fair price shop at Goutam Nagar, the dealer diverted the lorry to a neighbouring town for being sold in black market. On the way, the police intercepted the vehicle and seized the rice and sugar bags and also the lorry. They have also seized the account books of the fair price shop. During the course of investigation, the dealer disowned the essential commodities viz., rice and sugar bags. Is the dealer liable for prosecution and the sugar and rice bags so seized and the lorry in which they are being transported be confiscated?

- * Under Section 6-A of the Essential Commodities Act, 1955, where any essential commodity is seized for contravention of any of the provisions, the Collector may order confiscation of the essential commodity so seized and any package, covering

or receptacle in which such essential commodity is found and under Section 7, if any person contravenes any order made under Section 3, he shall be punishable in the case of an order made with reference to Cl (h) or Cl. (i) of sub-section (2) of Sec. 3, with imprisonment for a term which may extend to one year and shall also be liable to fine and in the case of any other order with imprisonment for a term which shall not be less than three months but which may extend to seven years and shall also be liable to fine and any property in respect of which the order has been contravened shall be forfeited to the Government. In the above case if it is proved that the Fair Price shop dealer has contravened the provisions of Sec.3, he is liable for the above punishment and the seized property is liable to be forfeited to the Government.

9

THE FOREIGN MARRIAGE ACT, 1969

(Act No. 33 of 1969)

115. *Registration of marriage solemnized in a foreign country*

115. John Franklin is an Englishman. He is aged about 25 years. Jhanshi, aged about 19 years went to England to stay there for some time along with her relatives. During that stay, she happened to meet John Franklin in a Library and from that day onwards they used to meet daily and their meeting ultimately resulted in love and subsequently, married in England. They came to India but the parents of the girl, Jhanshi did not recognize their marriage. They also produced a certificate of marriage from England. What can they do for obtaining legal recognition of their marriage in India?

- * Under Section 17 of the Foreign Marriage Act, 1969, the couple have to file a petition before the Marriage Officer informing their desire of the marriage to be registered. Thereupon, if the Marriage Officer is satisfied that the marriage has been duly solemnized in a foreign country in accordance with the law of that country between the parties

of whom one at least was a citizen of India, the Marriage Officer, upon payment of the prescribed fee, registers the marriage. From the date of such registration, the marriage shall be deemed to have been solemnized under this Act.

10

THE HINDU ADOPTIONS & MAINTENANCE
ACT, 1956

(Act No.78 of 1956)

- 116. *Permission from court to give an abandoned child in adoption*
- 117. *Effect of receipt of payment or reward in consideration of the adoption*
- 118. *Adoption of married persons*
- 119. *Effect of adoption of a boy already adopted*
- 120. *Condition of adoption of a son*
- 121. *Child to be adopted must be actually given and taken in adoption by the parents or guardian*
- 122. *Consent of mother for adoption*
- 123. *Effect of adoption - Marriage of adopted son*
- 124 & 125. *Effect of adoption - Adopted child shall not divest any person of any estate which vested in him before the adoption*
- 126. *Right of adoptive parents to dispose of their properties*
- 127. *Adoption by a bachelor and effect of marriage thereafter*

116. Lalitha, a daughter of Motilal Agarwal, was moving freely with her boy friends. She developed sexual desires and to satisfy her sexual desire she had intercourse with one of her friends which resulted in pregnancy. On coming to know of her pregnancy, she went to the neighbouring city on the pretext of continuing her education there. After some time, she gave birth to a male child. As she did not like to have a child before marriage and as it would cause a bad reputation to her father, she threw away the child in a dust bin. One rikshaw puller heard the cries of that child and took him and started bringing him up. The

boy appeared to be smart and charming and was attractive. So, one richman in the locality, by name Kamalakara Rao who has no children, wanted to take that boy in adoption validly by observing the legal formalities, but as he did not know the parents of that boy, Kamalakara Rao was seeking the advice of an advocate in the matter. What is the advice that can be given by the advocate?

- * Under sub-section (4) of Section 9 of the Hindu Adoptions and Maintenance Act, where both the father and mother are dead or have completely and finally renounced the world or have abandoned the child or have been declared by a court of competent jurisdiction to be of unsound mind or where the parentage of the child is not known, the guardian of the child may give the child in adoption with the previous permission of the court to any person including the guardian himself. So, as the parentage of the child is not known, the guardian of the child has to obtain permission from the court to give the child in adoption to Kamalakara Rao and after obtaining the permission from the court the boy can validly be taken in adoption by Kamalakara Rao.

117. An abandoned child was brought up by a maidservant. She had no means to maintain the child. She wanted to sell away the child to German couple, who had embraced Hinduism and intended to take the orphan girl to Germany. They paid Rs.5,000/- to the maid servant for giving the child, as a consideration for giving the child to them. They applied to the court for permission. On coming to know of the proposed adoption of the child for consideration, the President of the Mahila Mandal, which was a social organisation, intervened and brought to the notice of the court that the proposed adoption was for a consideration of Rs. 5,000/-. Under such circumstances, can the court grant permission to the guardian, viz., maid servant to give the child in adoption to the German couple?

- * Under sub-section (5) of Section 9 of the Hindu Adoptions and Maintenance Act, permission to a guardian to give the child in adoption cannot be granted if she has received or agreed to receive any payment or reward in consideration of the adoption. Further, the court has to see that in such a cross-country adoption the terms on which permission is to be granted will include consideration of the following factors,

viz., (1) whether the adoption is valid according to the law of the foreign country involved, (2) whether the adopted orphan can acquire the nationality of the adopter and will be permitted to emigrate to that country and (3) periodical reports to the court regarding the maintenance and welfare of the adoptee. These safeguards are designed to secure the welfare of the child so that the child may not be exploited in the foreign country.

118. Suraj Mal is a resident of Bombay and Gayitri is his wife. They have no children. In their caste, there is the custom of adopting even the married persons. Ramdev is looking after the welfare of the family of Suraj Mal and also his properties. Ramdev is aged about 25 years and he is also a married man. Suraj Mal after being examined by various doctors was told that the couple will not beget any children. As he has got some properties which are being managed by him with the active help and assistance of Ramdev, Suraj Mal and his wife came to a decision that they would take Ramdev in adoption and accordingly, they took Ramdev in adoption. After some time, Suraj Mal died and shortly thereafter, his wife, Gayatri also died. Thereafter, the nearest relations of Suraj Mal claimed the properties of Suraj Mal and they challenged the adoption and claimed the properties on the ground that Suraj Mal and his wife died intestate without any issues. What is the validity of the adoption and whether the so called relations of Suraj Mal are entitled to the properties of Suraj Mal?

- * Evidence has been let in by Ramdev to the effect that there is a previous custom in their community in that place to adopt married persons also. Therefore, when there is a custom in Maharastra to take in adoption even married persons also, it is a valid adoption under Section 10 (iii) of the Hindu Adoptions and Maintenance Act and consequently, the adoption of Ramdev by Suraj Mal is valid. When the adoption is valid, the so called relations of Suraj Mal are not entitled to his properties and Ramdev alone is entitled to the same.

119. Krishna Mohan married Ramseetha according to their caste custom and Hindu rites. They have no children. Krishna Mohan adopted the son of Gopal, who is aged about five years, after obtaining the consent of his wife. The boy was taken in adoption after following the due formalities as required under

the Hindu Adoptions and Maintenance Act. Four years after the adoption, Ramaseetha became pregnant and gave birth to a male child. Two years thereafter, her husband Krishna Mohan died. As she had begotten a son, subsequent to the adoption, her relatives, who attended the obseques of her husband, advised her to give away the adopted boy to Ramayya and Latchamma, who were asking her to give the adopted boy in adoption to them. Ramayya is aged about 30 years and Latchamma is aged about 28 years and they are having vast properties. Under such circumstances can Ramaseetha give her adopted son in further adoption to Ramayya and Latchamma?

- * Since the boy has already been adopted by Ramaseetha, under sub-section (ii) of Section 10 of the Hindu Adoptions and Maintenance Act, a child who has already been adopted shall be incapable of being taken in adoption. Further under sub-section (iv) of Section 11 of the said Act, if the adoption is by a female and the person to be adopted is a male, the adopting mother is atleast twenty one years older than the person to be adopted. As the boy whom Ramayya and Latchamma wanted to adopt is aged about 12 years by the date of asking and as Latchamma is aged 28 years and as the age disparity is less than 21 years, such adoption will be void.

120. Seetharatnam, a Brahmin widow has vast properties. She has a son, who is married and has a son. After the birth of a son, his father, i.e., son of Seetharatnam, died. Thereafter, differences arose between Seetharatnam and her daughter-in-law and so, her daughter-in-law was living separately with her son. Seetharatnam proposed to take the son of her sister in adoption. On coming to know about this, Seetharatnam's daughter-in-law objected. Can Seetharatnam take the son of her sister in adoption when the son of Seetharatnam's son (i.e., her grand son) is alive?

- * Under sub-section (i) of Section 11 of the Hindu Adoptions & Maintenance Act, if the adoption is of a son, the adoptive father or mother by whom the adoption is made must not have a Hindu son, son's son or son's son's son living at the time of adoption. In the above case, as the grand son of Seetharatnam is alive, she cannot validly take in adoption the son of her sister.

121. Vijayaraghava Rao and his wife, Renuka are having two sons and one daughter. They are not well off and Vijayaraghava

Rao is a sick person and is completely bed-ridden. Santheswara Rao is their best family friend. He is working as Deputy Collector and has no children. He asked his friend, Vijayaraghava Rao and his wife to give one of their sons in adoption to him. As they are poor and as Santheswara Rao is well off, they thought that at least one of their sons will be growing up in a well-to-do family and will have good education and so thinking, they agreed for the adoption of their last son. Santheswara Rao wanted to take the boy in adoption as per law. Vijayaraghava Rao is not in a position to rise from bed and he cannot physically hand over the boy to the adopted parents. However, performance of Datta Homam was not considered to be essential to the validity of the said adoption. As section 11 (vi) of the Hindu Adoptions and Maintenance Act says that the child to be adopted must be actually given and taken in adoption by the parents or guardian concerned, and as Vijayaraghava Rao is not in a position to actually participate in the adoption ceremony, what has to be done?

- * Though Section 11 (iv) of the Hindu Adoptions and Maintenance Act contemplates that the child to be adopted must be actually given and taken in adoption by the parents or guardian concerned, as Raghavendra Rao is physically disabled to participate in the adoption ceremony and hand over the boy to Santheswara Rao and his wife, he can give that authority to some third party. So handing over of the boy by a person deputed or authorised by Raghavendra Rao does not invalidate the adoption particularly when the performance of Datta Homam is not essential to the validity of the adoption.

122. Somasundaram and Girija have a son and a daughter. Subsequently, Girija converted herself into Islam and ceased to be a Hindu. Ramarao, a friend of Somasundaram, has no children though he has vast properties. Ramarao requested his friend Somasundaram to give his daughter to him, in adoption. The girl was aged six years and Rama Rao's wife was aged 35 years, and Ramarao is aged 45 years. Somasundaram, though willing to give his daughter in adoption to Ramarao, was apprehending a doubt as to its legal validity as his wife was converted into Islam and her consent, which is said to be necessary for a valid adoption, could not be obtained. What is the advice to be given to Somasundaram?

- * As the adoption is by a male and the person to be adopted is a female, and as the adoptive father is more than twenty one years older than the girl to be adopted, the impediment under Section 11 (iv) will not come in his way. As regards the consent of the wife of Somasundaram, as she has completely ceased to be a Hindu having taken Islam, under subsection (2) of Section 9 of the Act, her consent is not necessary and Somasundaram can give his daughter in adoption without the consent of his wife.

123. Parvathi and Rajeswara Rao, who are wife and husband are Brahmins, They have three sons and one daughter. Ramalingeswara Rao, who is also a brahmin, is the family friend of Rajeswara Rao. He has no children. He requested Rajeswara Rao to give one of his sons, in adoption to him. Rajeswara Rao consulted his wife, Parvathi and after obtaining her consent, they decided to give Bharani Kumar, their last son, aged about three years, in adoption to Ramalingeswara Rao. Days passed on and the boy was brought up and at marriageable age, he got several marriage alliances. One of the alliances was that of his natural father's brother's daughter. Though the adoptive father of the boy has expressed a doubt in view of the relationship, the girl's father said that there is change in the Gotras and the sur name has been changed and he has come to another family and there is no more relationship with his natural father or natural father's relations. Whether the proposal is legally valid?

- * Under Proviso (a) to Section 12 of the Hindu Adoptions and Maintenance Act, the adopted son cannot marry any person whom he could not have married if he had continued in the family of his birth. So the proposed alliance is invalid, and he cannot marry the daughter of the brother of his natural father.

124. Ramayamma and Bangarayya are wife and husband and they have some properties. They have no children. All the properties they have are the self-acquired properties of Bangarayya. Bangarayya executed a will in favour of his wife bequeathing all the properties in her favour. Within one year thereafter he died. Ramayamma after the death of her husband adopted one boy, Govinda Rao. After he became a major, differences arose between Ramayamma and her adopted son, Govinda Rao. Govinda Rao claimed the properties of Bangarayya, his adoptive father. Whether he is entitled to claim the properties?

- * Under clause (c) of Section 12 of the Hindu Adoptions and Maintenance Act, the adopted child cannot divest any person of any estate which vested in him or her before the adoption. So, Govinda Rao is not entitled to claim the properties of Bangarayya.

125. Shiva Prasad married Jaya as per caste custom and Hindu rites and led a happy married life. But to their misfortune, they had no children. Twenty years after their marriage, Shiva Prasad suffered from cancer. His wife, Jaya was not looking after him properly and she used to move in the society freely. Shiva Prasad had some properties. He thought that if the properties were left in the hands of his wife Jaya, she would lose the properties within no time and she has to suffer even for her maintenance. So, he consulted his friend who was an Advocate and on the advice of his advocate-friend, he executed a will in favour of a boy whom his wife Jaya might adopt with a condition that adopted boy should look after her properly and also pay Rs. 1,000/- per month to her regularly. That will was also registered. Afterwards, i.e., about six months after the execution of the will, Shiva Prasad died. After the death of her husband, Jaya adopted the son of the brother of her husband. After he became major differences arose between that boy and his adoptive mother and each of them claimed exclusive rights over the properties left by Shiva Prasad. What is the position with regard to the properties of Shiva Prasad?

- * Under proviso (c) to Section 12 of the Hindu Adoptions and Maintenance Act, any property which vested in his adopted child before the adoption shall continue to vest in such person subject to the obligations, if any, attaching to the ownership of such property including the obligation to maintain relatives in the family of his or her birth. So, the adoptive mother cannot claim any rights over the properties of her late husband as they were vested in the adopted child even before the adoption, however, subject to the condition that the adopted son should continue to pay Rs. 1,000/- p.m. to his adoptive mother regularly and look after her properly.

126. Ramana Rao married Rajeswari as per Hindu law and caste custom. They had no children. After waiting for about ten years, they adopted a boy Bharani, aged 3 years. Even before the adoption itself, an agreement was entered into between Ramana

Rao and some third person, Kalyanasundaram for sale of his property. After the adopted boy, Bharani became major, he questioned the sale made by his adoptive father, in favour of Kalyanasundaram. What is its effect?

- * Section 13 makes it clear that the adoptive father continues to have his power of disposal over his property and he can alienate the property prior to the adoption. If he has alienated the property by transfer and then made the adoption, the adopted son cannot question the alienation. Further, whatever powers of disposal he would have but for the adoption, he would continue to have even after adoption. An ante-adoption agreement may operate as a fetter upon the adoptive father's power of disposition over his property. There would be no need now to protect the interests of the adoptive father.

127. Satya Varma, aged about 30 years, is a bachelor. He has some properties. He has no idea of marrying. But he thinks of adopting a boy, Kiran, who is aged about 5 years, who is the son of his friend. Accordingly, he adopts Kiran as per law. Some time after the adoption, he marries one lady, Suguna, who is having some properties of her own. In course of time, Suguna died leaving behind her properties. Afterwards, differences arise between the adoptive father and his adopted son, Kiran. Kiran claims the properties of his adoptive father's wife. What is the position?

- * When a bachelor adopts and then marries, the subsequently married wife becomes only a step mother and there is no adoptive mother in such a case. After the death of the step mother as she left no children, her husband alone inherits the Streedhana properties of his wife and his adopted son, Kiran will not get any rights over the properties of his step-mother. These are the principles relating to maternal affiliation laid down in Section 14 of the Hindu Adoptions and Maintenance Act.

THE HINDU MARRIAGE ACT, 1955

(Act No.25 of 1955)

- 128 & 129. *Conditions of Hindu marriage*
- 130. *Registration of marriage*
- 131. *Restitution of Conjugal rights*
- 132. *Voidable marriage on the ground of wife's pregnancy by the time of marriage through some other person*
- 133. *Divorce on the ground of the husband renouncing the world*
- 134. *Divorce on the ground of not hearing the whereabouts of husband for more than seven years*
- 135. *Divorce on the ground of the husband suffering from venereal disease*
- 136. *Decree for divorce when there is no resumption of cohabitation for a period of one year or upwards*
- 137. *Decree for divorce by mutual consent*
- 138. *Marriage in contravention of age limits-Effect*
- 139. *Sec.22 of Hindu Marriage Act - Incamera proceedings*
- 140. *Effect of will executed by an insane person*
- 141. *Effect of a will with illegal or immoral conditions*
- 142 & 143. *Probate*

128. Ramayya has two daughters, Kamala and Vimala. Kamala was given in marriage to Vinod and they had a daughter, Mounika. Kamala is a sociable lady and used to participate in social activities. After the birth of Mounika, Kamala did not return to her husband's house and used to stay along with her parents. Vimala, the second daughter of Ramayya was subsequently married to one Gireesh, who was studying B.Com. at that time. Vimala is not a healthy lady and eventually, after her marriage, consummation did not take place between her and Gireesh and there was some defect in the sex organ of Vimala and also on account of the abnormal size of the male organ. Two years later, Vimala died. By the date of death of Vimala,

Mounika, the daughter of Kamala attained puberty. Kamala and her father Ramayya insisted Gireesh to marry Mounika and accordingly, he married. For convincing Gireesh to marry Mounika he was told that in the same village, Somayya married his brother's daughter. Likewise, another man married his father's brother's daughter and giving those examples Ramayya told Gireesh that there is nothing wrong in marrying Mounika. Is it a valid marriage in the eye of law?

- * Clause (iv) of Section 5 of the Hindu Marriage Act lays down the condition that the parties to a Hindu marriage should not be within the degrees of prohibited relationship, unless the custom or usage governing each of them permits of a marriage between the two; whereas under clause (v) the parties should not be Sapindas of each other. The expressions 'degree of prohibited relationship' and 'Sapindas relationship' are to be interpreted according to the definitions given in sub-clause (f) and (g) of Section 3 of the Act. As the Act itself defines, 'Sapinda relationship' and 'degrees of prohibited relationship', it is no longer permissible to import the concept of 'Sapinda' and 'Prohibited relationship'. But, if custom or usage permits marriage between persons in 'prohibited degree of relationship' or 'Sapinda relationship' such a custom is saved and the marriage would be valid.

129. A boy, by name Kishore, aged about 21 years, fell in love with Renuka, aged 18 years. Their parents did not approve their proposal of marriage as they belonged to different castes. Both believed in God and were visiting temples on festival days. The boy and the girl went to the temple and performed pooja and thereafter, exchanged garlands in the presence of the priest and started living as husband and wife, separately in a house and they are eking out their livelihood by their labour. They begot two children and in the third year after the birth of the second child, her husband, Kishore died in a motor accident. One broker came and paid Rs. 5,000/- to Renuka, the wife of the deceased Kishore and obtained her signatures saying that she would not get any more. Believing the statement made by the broker, the widow put the signatures and received the amount. The paternal grand parents refused to provide anything and claimed that the entire property is their self-acquired property. What is the position of the widow and her sons?

- * The marriage is a void marriage as it was not performed as per the custom. Under Section 5 of the Hindu Marriage Act, the marriage between Kishore and Renuka by exchange of garlands in a temple is void except in the state of Tamilnadu. However, so far as their children are concerned, they are entitled to claim maintenance either under Section 125, Cr.P.C., illegitimate children are also entitled to claim maintenance from their parents. Further, under Section 140 of the Motor Vehicles Act (corresponding to Section 92-A of the old Act), the owner of the lorry has to pay instantaneously an amount of Rs. 25,000/- to the dependents of the deceased towards compensation even without proof of rashness and negligence on the part of the driver. If there is valid insurance as on the date of the accident, the insurance company is liable to pay the said amount. Even without adducing any evidence, the claimants are entitled to the instantaneous payment of Rs. 25,000/- from the insurance company or the owner of the vehicle, as the case may be, for the death of the deceased in a motor accident. In addition, she can also claim compensation for the death of her husband in the accident if she can prove by cogent evidence that the accident was due to the rash and negligent driving of the vehicle by its driver. The quantum of compensation depends upon the income of her husband.

130. Madhu and Latha were studying B.Com. in Rajah Bahadur College of Fine Arts, Guntur. They fell in love with each other. Their love went upto the extent of marriage. They went to Tirupathi and married as per Hindu law. At the time of their marriage, some of their friends including some advocates, attended the marriage. The advocates who attended the marriage advised them to get the marriage registered before the Marriage Registrar. This marriage was much against the wishes of the respective parents of both Madhu and Latha. The couple expressed that when the marriage was celebrated in the temple as per Sastras and Homam and Saptapadi was also performed, why should the marriage be registered. One of the Advocates advised that as the marriage is against the wishes of their respective parents, if any of the parents file a petition for declaration that the marriage is void, it is very difficult to prove the marriage in a court of law and so, on the advice of their well wishers the couple decided to get the marriage registered. What is it they have to do?

- * A Hindu Marriage which has been solemnized may be registered by the Registrar in the Hindu Marriage Register. Under Rule 5 (1) of the A.P.Hindu Marriage Registration Rules, 1965, an application for registration of the marriage, in Form 'A', signed by each party to the marriage or by the guardian of such party, shall be presented in person before the Registrar in whose jurisdiction, the marriage is solemnized or before the Registrar in whose jurisdiction either party to the marriage has been residing for at least six months immediately preceding the date of marriage. Such application shall be attested by a Magistrate of any Class or a member of a Zilla Parishad, a Panchayat Samithi or Gram Panchayat or Municipal Council or a Medical Officer or a Member of the Parliament or State Legislature. The application shall be presented within one month from the date of solemnization of the marriage. On being satisfied about the marriage, the Registrar shall enter the particulars of the marriage in the Hindu Marriage Register, which shall be signed by both the parties to the marriage. If for any reason the Registrar refuses to register the marriage, an appeal shall lie to the Registrar General.

131. The marriage between Rambabu and Srilatha was performed at Tirumala and grand reception was also arranged. After the marriage, they returned to their place Eluru and nuptial marriage was arranged. On the date of nuptial marriage or on the subsequent two or three days Rambabu could not perform any sexual acts. He used to avoid sexual acts by saying that he is taking some medicines. Like that, two or three months elapsed without any sexual intercourse. A close friend of Srilatha, visited one day and during their chit-chat, enquired Srilatha about her first night experience. Srilatha simply smiled and did not say anything. After three months or so, Srilatha went to her parents' house. The mother of Srilatha was enquiring Srilatha about her menses details as she was very eager to hear from her that she was pregnant. Srilatha avoided the conversation. She returned to her husband's house. This time, her husband, Rambabu confessed his inability and pleaded that they could live as husband and wife and she could have sexual intercourse with any third person, if she so chooses. But as a pious Hindu Stree she did not agree. She went away to her parents' house. After 3 or 4 months, at the persuasion and insistence, Srilatha told her

mother that her husband is impotent and so there was no chance of herself becoming pregnant. The husband filed an application under Section 9 of the Hindu Marriage Act, for restitution of conjugal rights. His wife then filed an application under Section 12 of the Hindu Marriage Act, for a decree of nullity on the ground that the marriage was not consummated owing to the impotence of her husband. The wife filed this petition more than one year after the performance of the marriage stating that she was ignorant of the fact of impotency of her husband at the time of the marriage. Rambabu and Srilatha were examined by separate doctors, Srilatha by a lady doctor and Rambabu by a Medical Officer. The doctor who examined Rambabu opined that Rambabu is impotent. The lady doctor who examined Srilatha opined that the hymen of the wife Srilatha was intact. In the above circumstances, can the Court grant relief to the husband or wife?

- * Under Section 9 of the Hindu Marriage Act, the husband is not entitled for restitution as he is medically proved to be impotent and that the marriage is void under Section 12 as the marriage was not consummated owing to the impotence of the husband, Rambabu. So, the petition filed by the husband for restitution has to be dismissed and the petition filed by the wife for a decree of nullity has to be allowed.

132. Sailaja is a daughter of Ruby Agarwal, a bullion merchant. She used to move freely with her boy friends. She had abortions twice even before her marriage. Concealing all these facts, she was given in marriage to Suresh and the marriage between Suresh and Sailaja was performed as per Hindu rites and caste custom, on a large scale. The marriage was also consummated. Within two months of the marriage, it came to light that she was running 5th month of pregnancy. The husband was ignorant of the pregnancy and her sexual connections prior to the marriage. He was also ignorant of the fact that she underwent abortions twice prior to the marriage. Then he stopped to cross her and filed an application under Section 12 of the Hindu Marriage Act for a decree of nullity of marriage. What would be the effect of the petition?

- * As the wife Sailaja was at the time of the marriage with Suresh, was pregnant by some other person, under Section 12 (1) (d) of the Hindu Marriage Act, the Civil Court can grant decree of nullity of marriage.

133. Sandhya and Ragini are two friends and they are living in the opposite houses. Sandhya married Jaganmohan under the Hindu Marriage Act and Ragini married Premnath under the Special Marriage Act. They lived happily for some time. Both the husbands also have become friends because of their wives and both of them used to visit Ramakrishna Mutt and other religious mutts and they used to attend the speeches delivered by Swamijis. After some time, they got vexed with the family life and joined the Mutt and became Sanyasis and renounced the world. Their respective wives vexed with the attitude of their husbands, decided to obtain divorce. Can they obtain divorce on the sole ground that their respective husbands became Sanyasis and renounced the world?



- * Under Section 13 (1) (vi) of the Hindu Marriage Act, any marriage solemnized, be dissolved on the petition filed by either of the couple by a decree of divorce on the ground that the other party has renounced the world by entering any religious order. So Sandhya, the wife of Jaganmohan. Whose marriage was performed under the Hindu Marriage Act, can obtain a valid divorce from the court. But, as regards the other couple, Ragini whose marriage with Premkumar was performed under the Special Marriage Act, the husband becoming a Sanyasi joining a religious order, renouncing the

world is not made a ground for obtaining divorce by the wife. So, Ragini cannot obtain a valid divorce from the court on this ground.

134. Ravi Kumar and his wife, Sailaja were travelling in Charminar Express from Hyderabad to go to Vijayawada in the month of September, 1993. There were rains and floods also. When the train reached Jangam, the railway track got washed off due to floods and the train was involved in an accident. Many persons died and many passengers got washed away in the floods and some received injuries. Sailaja, who was travelling in the said train along with her husband, Ravi Kumar also sustained grievous injuries and became unconscious and she was admitted in the hospital, at Vijayawada. She regained her consciousness after one day and enquired about her husband, Ravi Kumar. Her husband's whereabouts were not known. The railway authorities prepared a list of persons died in the accident in which, she found the name of her husband but his body was not traced. So, Sailaja did not believe the list prepared by the railway authorities as true and she was very confident that her husband was alive and she waited for her husband for a long time. Her parents advised her to re-marry. She waited for her husband for more than seven years and in the 8th year her parents pressurised her to re-marry and they selected a good bridegroom who was willing to marry Sailaja. In those circumstances, can Sailaja validly remarry?

- * As the whereabouts of the husband have not been heard of as being alive for a period of seven years and even more, Sailaja can file a petition under Section 13 (1) (vii) of the Hindu Marriage for a decree of divorce on the ground that she has not heard of the whereabouts of her husband as being alive for a period of seven years and after passing of the decree for divorce and the marriage between Sailaja and her husband, Ravi Kumar is dissolved by such decree of divorce, she can validly re-marry.

135. Raju, a multi-millionaire, is having many vices. He always moves with prostitutes. He is aged about 25 years. Not revealing his character, he was married to Meena. The marriage was also consummated. Because of having sexual intercourse with prostitutes, Raju acquired sexual diseases like gonorrhea. He was treated by a doctor, but it was not cured. This fact was not brought to the notice of his wife, Meena. One month after the

consummation of the marriage, Meena was getting white discharge and was bleeding. She went to her parents' house and there she was treated by a lady doctor. On examination, the lady doctor found that Meena was having sexual disease which is in the initial stage. The doctor advised Meena to get her husband also examined by a doctor. When Meena asked Raju to get himself examined by a doctor, he used to postpone the matter on one pretext or other. Finally, he was forced to undergo medical examination upon which it was revealed that he was having gonorrhoea and other sexual diseases which are venereal diseases of communicable form. Under such circumstances, can Meena get a divorce?

- * Under sub-section (1) of Section 13 of the Hindu Marriage Act, as Raju was suffering from venereal disease in a communicable form, his wife Meena is entitled to file an application under Section 13 for dissolution of marriage by a decree of divorce.

136. Divakar married Ramaseetha as per Hindu rites and caste custom. Divakar had his parents and two brothers and all of them were living together and it was a joint family. After some time, Divakar noticed a single act of infidelity on the part of his wife. Then he disliked her and filed a petition for divorce on the ground that she was living in adultery. Evidence was adduced during the enquiry of the petition. After completion of evidence, the court found that it was only a single act of adultery on the part of his wife and so instead of granting divorce under Section 13 of the Hindu Marriage Act, the court passed a decree for judicial separation under section 10 of the said Act. Within seven months after judicial separation, the husband died. After the decree, there is no resumption of cohabitation between the wife and husband. In such circumstances, can she claim a share in the joint family property on the ground that she continues to be the wife of her late husband?

- * Mere judicial separation does not put an end to her marital status as wife. Under Section 13 (1-A) of the Hindu Marriage Act, if it is established that there is no resumption of cohabitation as between the parties to the marriage for a period of one year or upwards after the passing of a decree for judicial separation, no doubt a decree for divorce can be granted. In this case, since there is no decree of divorce

passed by the court, the relationship of wife and husband between Ramaseetha and Divakar does not cease and so, the wife, Ramaseetha can file a suit for partition and claim her husband's share.

137. Nagaraj was selected as an I.A.S. Officer in a reserved quota and he worked as Sub-Collector at various places and ultimately became the Collector. He was posted as Collector of Krishna District at Machilipatnam. Even before he was selected as an I.A.S. Officer, he married Malleswari and they have got two daughters. He led a happy married life for some time. After he became an independent Collector, he was addicted to bad vices like drinking and womanising and to meet the expenses for his bad vices, he became corrupt in his official duties. His wife, Malleswari requested him several times to give up his bad vices saying that they were already having two young daughters. He turned a deaf ear to her words. While he was working as a Collector in Machilipatnam, one music concert was arranged in which one Swarna, an All India reputed singer participated. She was not married. However, because of her mingling with several persons in connection with the music programmes, she turned out to be of a loose character. The music programme was over and after that, she was very much pleased with the arrangements made by the Collector. On that night the Collector invited her for dinner at the guest house. She accepted the invitation and attended the dinner. At that time, they had a free talk cutting jokes and finally, Swarna had an intercourse with the Collector. From that time onwards, they used to meet very often at the guest house at the Head Quarters and also at other places. Finally, both of them came to an understanding to marry. It was indeed, Swarna who having been satisfied with the official position of Nagaraj and his treatment towards her, pressurised him to marry her. Though he expressed that he was already a married man, she requested him to devise some plan to get rid of the first wife. Then, the Collector started illtreating the first wife. Malleswari, the first wife got fed up with the behaviour of her husband. Ultimately, the Collector suggested divorce by providing sufficient provision for her and for her children and requested his first wife to give her free consent. Can a decree for divorce be obtained by the Collector in the above circumstances?

- * Under Section 13-B of the Hindu Marriage Act, a decree for divorce by mutual consent can be obtained from the court. For

that purpose, a petition for dissolution of marriage by a decree of divorce has to be presented to the District Court by both the parties to marriage together on the ground that they have been living separately for a period of one year or more, that they have not been able to live together and that they mutually agreed that the marriage should be dissolved. On the petition so filed, not earlier than six months after the date of the presentation of the petition and not later than eighteen months after the said date if the petition is not withdrawn in the meantime, the court shall, on being satisfied, that the averments in the petition are true, pass a decree of divorce declaring the marriage to be dissolved with effect from the date of the decree. After obtaining the decree of divorce, Nagaraj, the Collector can validly marry Swarna.

138. Bheemayya had a daughter by name Bharathi. She was aged about 16 years. Bheemayya was a poor man. He was searching for a suitable match for Bharathi. As he was a poor man and as every one was asking for heavy dowry which he could not pay, Bharathi's marriage could not be settled. However, to his fortune, Murty, a resident of neighbouring village, who studied Intermediate, came forward to marry Bharathi without taking dowry. The marriage was performed. The father of Murty did not like the marriage and so, he filed a petition against the couple, Bharathi and Murty stating that the marriage which took place between Bharathi, aged 16 years and Murty, aged 18 years, was not a valid marriage in the eye of law and he sought for a decree of dissolution of marriage and also requested the court to punish Bheemayya for contravention of the conditions of valid marriage. Under Section 5 (iii) of the Hindu Marriage Act, the bridegroom has to complete the age of twenty one years and the bride the age of eighteen years at the time of the marriage. In the case of contravention of this condition, every person who procures a marriage to be solemnized in contravention of the above condition is punishable under Section 18 (a) of the Hindu Marriage Act with simple imprisonment which may extend to fifteen days or with fine which may extend to one thousand rupees or with both. In those circumstances, what is the effect of the marriage?

- * The marriage in contravention of the age limits can neither be void nor voidable though it is punishable under Section 18. But the person who procures a marriage to be solemnized in

contravention of the age limits is punishable under section 18.

139. Chitra, a leading Cinema actress, married many persons, one after the other, leaving the former, without following the custom or without observing the procedure prescribed under law. Like that, she fell in love with one Ramachandra Rao, a popular Director who was married and also maintaining one concubine. They underwent the marriage without dissolving their respective prior marriages. They had also got the marriage registered under the Special Marriage Act. Under law, if any of the spouse is having a living wife or husband, as the case may be, they are not entitled to have a valid remarriage. After one year, as usual, Chitra wanted to avoid the marriage with the Director Ramachandra Rao as she wanted to marry a newly upcoming Hero who was more than ten years younger to her. So, Chitra filed a petition in the Civil Court under Section 13 of the Hindu Marriage Act for a decree of divorce. She has also filed an application under Section 22 of the Hindu Marriage Act to conduct the proceedings in camera as she was a famous film star and also requested the Court to give a direction to the persons concerned not to print or publish any matter in relation to such proceedings, as her reputation would be badly damaged. Can this petition be allowed by the Court?

- * Under Section 22 of the Hindu Marriage Act, every proceeding under this Act shall be conducted in- camera and it should not be lawful for any person to print or publish any matter in relation to any such proceeding, except a judgment of the High Court or of the Supreme Court printed or published with previous permission of the Court. If any person prints or publishes any matter in contravention of the above provision he shall be punishable with fine which may extend to one thousand rupees. So, the Court, on being satisfied that the facts of the case warrant an in- camera enquiry, can grant the request of the petitioner.

WILLS

140. Ramakrishna Rao acquired vast properties. He has a wife, two sons and a daughter. He suddenly fell ill which caused apprehension in his mind of his imminent death in near future. So, he thought of executing a will bequeathing his properties in favour of his wife and children so that there will be no trouble from his brothers and other relatives. He consulted an advocate who advised him to sign the will in the presence of two independent witnesses and also obtain their signatures on the will as attesting witnesses. Thereafter, he was bed-ridden for a fortnight and however by treatment he recovered his health. After he recovered his health, he called a doctor and two witnesses and the doctor after examination certified that Ramakrishna Rao was in a sound and disposing state of mind to execute the will. Accordingly, Ramakrishna Rao executed the will, put his signature and also got the will attested by two independent attesting witnesses. A week thereafter he again fell ill and died. After the death of Ramakrishna Rao, his brothers claimed a share in the properties. What is the position?

- * An insane person can make a valid will during a lucid interval, during which time he has testamentary capacity and is competent to make his will. As Ramakrishna Rao was certified to be in a sound and disposing state of mind to execute the will, after his examination by the doctor, and when he was in a fit condition he executed the will validly which was attested by two independent witnesses and as it is the last will of the testator, it is a valid will and as the properties are the self-acquired properties of Ramakrishna Rao, his brothers are not entitled to any share and as per the will his wife and children are entitled to the properties of late Ramakrishna Rao after his death.

141. Sadguna Rao has vast properties. Arjuna Rao is residing in a house opposite to the house of Sadguna Rao. Arjuna Rao has a daughter. There is bitter enmity between Sadguna Rao and Arjuna Rao. Arjuna Rao is commanding good reputation in the locality. That is also an eye-sore to Sadguna Rao. So, Sadguna Rao called a boy, Manohar Rao, aged about 25 years and asked him to entice away the daughter of Arjuna Rao and if he does so, he will bequeath a house and the

boy Manohar Rao has agreed for that and accordingly Sadguna Rao has executed a will. Whether such a conditional will for the purpose stated above is a valid will?

- * When the condition imposed under the will is illegal or immoral or impossible, such a will is void. As in the above case, the condition imposed is an illegal condition, the will is void.

142. Ramasundaram has got vast properties. He executed a valid will in favour of his wife and daughter bequeathing his properties. After some time, he died. After the death of Ramasundaram, his brother's son, who had no right at all on the properties of late Ramasundaram, was trying to take forcible possession of one acre of wet land which was adjacent to his own land. Though the wife and daughter of Ramasundaram claimed that they have got the properties under a valid will executed in their favour by Ramasundaram, the brother's son did not pay heed to their words, saying that the will was not a valid one, and that it had no legal effect. What has to be done by the wife and daughter of Ramasundaram to give effect to the will?

- * When there is a dispute with regard to the will, the beneficiaries under the will can file an application to the District Judge for probate giving the details of the will executed by the testator. Thereupon, after conducting an enquiry by giving notices to the persons opposing it, the District Judge will give the probate duly making a certificate under the seal of the court. The probate of the will when granted establishes the will from the death of the testator and renders valid all intermediate acts of the executor.

143. Srirama Rao has got some properties. He executed a will bequeathing all his properties in favour of his wife and son. It is a valid will and it was the last will of the testator. Sometime after the execution of the will, Srirama Rao died. But the executor of the will was prevented from taking possession of the properties. What is the remedy?

- * In the above circumstances, the executor has to obtain a probate from the District Court.

THE HINDU MINORITY AND GUARDIANSHIP ACT, 1956

(Act No.32 of 1956)

- 144. *Step-father cannot be the natural guardian for minor girl*
- 145. *Natural guardian of a Hindu Minor*
- 146. *Ineligibility of a person to act as natural guardian of a minor*
- 147. *Natural guardianship on adoption*
- 148. *Effect of lease executed by father on behalf of his minor son*
- 149. *Appointment of testamentary guardian*

144. Sreerama Murty and Kamakshi are husband and wife and they have a daughter, aged 5 years. Sreerama Murty dies. After his death, Kamakshi, being the mother, becomes the natural guardian for the minor daughter. After the death of her husband, Kamakshi falls in love with one Muslim, Firoz Khan and gets converted herself into a Muslim and marries him. Firoz Khan is insisting his wife Kamakshi to convert her daughter also into a Muslim. The paternal uncle of the girl comes to know of this and files a petition in the court for removal of the mother from the guardianship of the girl. Of course, the minor girl expresses that she will follow her mother. What would be the effect of the petition filed by the paternal uncle of the girl?

- * Under explanation to Section 6 of the Hindu Minority and Guardianship Act, the expressions 'father' and 'mother' do not include a step-father and a step-mother. In the above case Firoz Khan becomes the step-father of the minor girl and he cannot be the natural guardian for the minor girl. The mother alone will be the natural guardian but she converted herself into a Muslim. Even though the minor expressed a desire to continue to live with her mother and to change her faith to Islam, still the court came to the conclusion that it was not for the welfare of the minor to be in such an environment as the welfare of the minor is the paramount consideration and normally, the minor child is to be brought up in the religion

of her father.

145. Gopichand and Swarooparani have two sons, aged 6 years and 7 years. After the birth of the second son, Gopichand falls in love with one Muslim lady, Razia Begum and he ultimately converts himself to a Muslim and marries Razia Begum. Still he wants to have the custody of the two children born through his first wife, on the ground that he is the natural guardian. What is the position?

- * Normally, under Section 6 of the Hindu Minority and Guardianship Act, the natural guardian of a Hindu minor, in respect of the minor's person as well as in respect of the minor's property, in the case of a boy or an unmarried girl is the father and after him the mother provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother. But under proviso (a) to Section 6 if the father has ceased to be Hindu he shall not be entitled to act as the natural guardian of a minor. In the above case, as Gopichand has converted himself to a Muslim and ceased to be Hindu, he shall not be entitled to act as the natural guardian for his two sons and consequently, he will not be entitled to the custody of the two children.

146. Haragopal and Leelarani are husband and wife and they have two sons. After some time, Haragopal completely and finally renounces the world by becoming an ascetic (Sanyasi). In such a case, who will be the guardian of the minor sons?

- * Under proviso (b) to Section 6 (a) of the Hindu Minority and Guardianship Act, no person shall be entitled to act as the natural guardian of a minor if he has completely and finally renounced the world by becoming a Sanyasi. Therefore, as per sub-section (a) of Section 6, after the father, who is excluded under the proviso (b), the mother is the natural guardian for the minor sons.

147. Rameswari and Bheemarao are wife and husband and they have two sons and one daughter. They are middle class people. Nagendra Rao is their best family friend and he has no children. He requested Bheemarao and his wife to give one of their sons in adoption to him. They accordingly agree and give their second son to Nagendra Rao in adoption. After some time, the adoptive father becomes Sanyasi and does not look after the

boy properly. The natural father comes to know of this and wants to manage the properties of his natural son given by his adoptive father on the ground that his adoptive father has become a Sanyasi. Whether the natural father can act as a guardian of the adopted boy?

- * Under Section 7 of the Hindu Minority and Guardianship Act, the natural guardianship of an adopted son who is a minor passes, on adoption, to the adoptive father and after him to the adoptive mother but not to his natural father. So, his natural father cannot be the guardian of his son who was given in adoption.

148. Dhilleswara Rao and Kalpana are husband and wife. They have one son, Vinod. When Vinod is aged about five years, his maternal grand father bequeathes two acres of land by executing a registered will. Thereafter, they begot two more sons. After five years, the area in which the two acres of land bequeathed to Vinod becomes a very busy locality and several flats come up and it becomes a very busy commercial area and consequently, the cost of the two acres of land of Vinod has considerably enhanced. Several persons come forward to give heavy amounts for the said land, both in the shape of black money and white money. So the natural father of Vinod, i.e., Dhilleswara Rao wants to dispose of the property and he wants to keep the sale proceeds and utilise the same for the benefit of his three sons. Accordingly, he files an application in the court under Section 8 of the Hindu Minority and Guardianship Act for permission to dispose of the land of his minor son, Vinod who was aged 16 years at that time. The court refused to grant permission on the ground that it is not for the benefit of the minor, Vinod. Previous permission of the court is necessary under Section 8 (4) of the Hindu Minority and Guardianship Act, in the case of transfer or sale of land of the minor. Thereafter, the father of the minor boy wants to lease out the property for commercial purposes by taking money, some amount publicly and some amount secretly. He executes the lease deed on behalf of the minor for a period of ten years. Whether the lease is binding on the minor?

- * The lease executed by Dhilleswara Rao on behalf of his minor son, Vinod is not binding on the minor as the lease is for a term exceeding five years or for a term extending more than one year beyond the date on which the minor will attain majority, as per Section 8 (2) (b) of the said Act. Any

alienation in contravention of the said provision, is voidable at the instance of the minor.

149. Sangameswara Rao and Radhakumari are husband and wife and they have one son Keerthi, aged four years. Sangameswara Rao's health is not good and he is doubtful about his survival. In his opinion, his wife is an innocent lady who is not worldliwise. They have got some properties. Sangameswara Rao thinks that it would be better to appoint some one as guardian for his minor boy to look after him and safeguard his properties. So, he appoints his' own brother as a testamentary guardian by executing a will in respect of his minor son and also minor's property. Thereafter, the father, Sangameswara Rao dies. What is the effect of the will executed by Sangameswara Rao and who will be the guardian for the minor boy?

- * Under sub-section (2) of Section 9 of the Hindu Minority and Guardianship Act, the appointment of testamentary guardian by the natural father, which is under sub-section (1) of Section 9, in respect of his minor son and his property, shall have no effect if the father predeceases the mother. So, after the death of Sangameswara Rao, inspite of the fact that he appointed a testamentary guardian, the mother alone would be the guardian of her minor child and not the testamentary guardian.

13

THE HINDU SUCCESSION ACT, 1956
(Act No.30 of 1956)

- 150. *Rights of illegitimate son*
- 151. *Right of a person who has separated himself from the coparcenary before the death of his father*
- 152. *Notional partition*
- 153 & 154. *Exclusion of Class II Heirs*
- 155. *Remarriage of mother - Right to claim share in the joint family properties.*
- 156. *Property possessed by a female Hindu*

157. *Preference of son, daughter over others*
158. *Devolving of property inherited by a female from her mother*
159. *Devolving of property inherited by a female from her husband*
160. *Rights of step - son to the properties of his step - mother*
161. *Rights of child in the womb*
162. *Preferential right to acquire interest in the business*
163. *Disqualification of a person who commits murder from inheriting the property of the person murdered*
164. *Acquittal of accused by criminal court - Entitlement of a share in the property*
165. *Effect of conversion of a Hindu to another religion*

150. Parameswara Rao has one concubine, Savitri. Through Savitri, Parameswara Rao has one son. He has also a daughter through his legally wedded wife, Renuka and after some time, Renuka died. Parameswara Rao celebrated the marriage of his daughter also but, after begetting a female child, his daughter died. Subsequently, Parmeswara Rao also died. So on the date of the death of Parameswara Rao, his illegitimate son born through concubine Savitri and daughter's daughter alone are alive. Whether the illegitimate son is entitled to any share in the properties of Parmaswara Rao?

- * Under the Hindu Succession Act, 1956, section 3 (1)(j) provides that the relationship contemplated by the Act is only legitimate relationship. So, the illegitimate son has no place in the scheme of inheritance to his putative father. Under Section 10, the daughter's daughter will become class I heir and will exclude the illegitimate son and the illegitimate son will not get any share in the property.

151. Lakshmananna has three sons Kishore, Murali and Prakash. Kishore separated himself from the joint family, taking his share of the property in the joint family property. The remaining two sons, Murali and Prakash were living along with their father. Murali died leaving behind his wife and daughter. Lakshmananna subsequently died. Whether Kishore, who got himself separated is entitled to a share in the properties of Lakshmananna?

- * Under Section 6 of the Hindu Succession Act, 1956, when a male Hindu dies after the commencement of the said Act having at the time of his death an interest in a Mitakshara coparcenary property, his interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with the above said Act. Under explanation 2 to Section 6, nothing contained in the proviso to the section shall be construed as enabling a person who has separated himself from the coparcenary before the death of the deceased or any of his heirs to claim on intestacy a share in the interest referred to therein. Therefore, Kishore, who has separated himself from the coparcenary before the death of the deceased, cannot claim a share in the properties of his father Lakshmana.

152. Ramanna and Somanna are two brothers. They belong to a Hindu joint family. No partition took place between them. Both Ramanna and Somanna are married. After some time, Ramanna died. Does the death of Ramanna destroy the jointness of the family and whether the wife of Ramanna is entitled to any share in the joint family property?

- * Under Section 6 of the Hindu Succession Act, 1956, when a male Hindu dies after the commencement of the said Act having at the time of his death an interest in a Mitakshara coparcenary property, his interest in the property shall devolve by survivorship, upon the surviving members of the coparcenary on the theory of notional partition and consequently his wife is entitled to the share of Ramanna in the joint family property.

153. Srinivasa Rao has two wives, Kalpana and Lakshmi. He has two sons through his first wife Kalpana, by name Venkateswara Rao and Koteswara Rao. Both the sons are married. Srinivasa Rao has also one daughter, Revathi. After some time, Koteswara Rao died leaving behind his wife, Sri Devi. After the death of Koteswara Rao, his wife, Sridevi was not being looked after well and so she demanded her husband's share in the joint family. But, Srinivasa Rao, her father-in-law refused to give a share in the joint family property saying that his son Koteswara Rao, i.e., the husband of Sridevi died without any children and so, she is not entitled to any share. What is the position?

- * Under Section 10 of the Hindu Succession Act, 1956, in the distribution of the property, Class I heirs will exclude Class II heirs. Class I heirs are widow of the intestate, when there are more widows than one, they together take one share only. sons and daughters take one share each, mother takes one share and each of the pre-deceased son is notionally allotted one share which is actually distributed among those who represent his branch and each predeceased daughter notionally gets one share which is distributed among her surviving daughters and sons. So under Section 10, Sridevi is entitled to the share of her husband in the joint family property.

154. Subba Rao and Rukmini have one son, Bharani and one daughter, Bharathi. Both Bharani and Bharathi were married Bharani has one daughter and Bharathi has one son. Bharani got vast properties from his maternal grand- father. After some time, Bharani died leaving his widow and a daughter besides his father, Subba Rao and grand father, Seethanna and his sister and sister's son. Whether his father and grand father are entitled to any share in the properties of Bharani?

- * Father and grand father are class II heirs. Since late Bharani has his wife and one daughter, who are Class I heirs. and as Class I heirs exclude Class II heirs, the father and grand father of Bharani will not get any share in the properties of Bharani.

155. Ramalingeswara Rao died leaving behind his widowed wife, daughter, who is unchaste and an illegitimate son. The wife had remarried. Whether remarried wife and unchaste daughter are entitled to any share in the property of Ramalingeswara Rao?

- * Re-marriage of wife is no disqualification. Unchastity is also not a disqualification for claiming share in the properties. So both remarried wife and unchaste daughter are entitled to take their respective shares in the property of Ramalingeswara Rao. The illegitimate son is also excluded.

156. Rajeswari, a Hindu Widow, inherited property from her late husband prior to 1956. (It was treated as a limited estate) After 1956, she executed a gift deed in favour of her daughter Lalitharani, in respect of some property and another gift deed in favour of her sister's son. Whether the gift deeds executed by Rajeswari are valid?

- * Under sub-section (1) of Section 14 of the Hindu Succession Act, 1956, any property possessed by a female Hindu, whether acquired before or after the commencement of the said Act, shall be held by her as a full owner and she has got the absolute rights over her properties and so she can execute any gifts and the gifts so made by her are valid.

157. Somamma is the wife of Rajasekharam. Somamma has got some properties through her mother. The couple have got one son Krishna Mohan and one daughter, Ramalakshmi. They have performed the marriage of their daughter, Ramalakshmi with one Phalguna Rao. After some time Somamma died. Who are entitled to the properties of late Somamma?

- * Under Section 15 of the Hindu Succession Act, 1956, the son, daughter including the children of any predeceased son or daughter and the husband have preference against others for the property of a female Hindu dying intestate. So, the son, Krishna Mohan and the daughter, Ramalakshmi and the husband Rajasekharam are entitled to the property of the female Hindu Somamma.

158. Jaya is the wife of Krishna. Jaya has property both movable and immovable from her mother, which was given to her at the time of her marriage. Subsequently she died. She has no children. Her father and mother also died. Her husband also died. Upon whom the property of late Jaya devolve after her death?

- * Under sub-section (2) of Section 15 of the Hindu Succession Act, 1956, any property inherited by a female Hindu from her mother or from her father shall devolve, in the absence of any son or daughter of the deceased including the children of any predeceased son or daughter, upon the heirs of her father.

159. Gopala Rao married Gowri according to Hindu rites and caste custom. Gopal Rao acquired some properties while he was in service. They had no children. After the death of Gopala Rao, his wife Gowri used to manage the properties. She also died after some time. She did not execute any will nor did she gift the properties to anyone. Upon whom the property of late Gopala Rao will devolve after the death of his wife Gowri?

- * Under clause (b) of Sub-Section (2) of Section 15 of the Hindu

Succession Act, 1956, any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased including the children of any pre-deceased son or daughter, upon the heirs of the husband. So, after the death of Gowri, the properties of late Gopala Rao will devolve upon his heirs.

160. Seethabayamma was the second wife of Lakshmana Rao. Seethabayamma had some property inherited from her mother. Seethabayamma and Lakshmana Rao had a son and a daughter. Lakshmana Rao had a son through his first wife. Subsequently, Seethabayamma died. Whether the son of Lakshmana Rao through his first wife is entitled to any share in the property of Seethabayamma?

- * Under Section 15 (1) (a) of the Hindu Succession Act, 1956, 'son' does not include stepson. The son of Lakshmana Rao through his first wife will become step son to Seethabayamma. He does not come under the head of 'son' in Section 15. He can come in only as heir of husband under sub-clause (b). So the son and daughter of Lakshmana Rao through Seethabayamma alone are entitled to the property of Seethabayamma to the exclusion of the son of Lakshmana Rao through his first wife.

161. Ramkumar and Sujatha are husband and wife. Though they were married for 10 years, they had no children. Then they adopted a boy, by name Sunil, aged about 4 years. After the adoption, the wife became pregnant. Even before the delivery of Sujatha, her husband, Ramkumar died. Subsequently, Sujatha gave birth to a male child. A question has arisen as to whether the male child born to Sujatha after the death of Ramkumar is entitled to a share in the properties of Ramkumar. What is the position?

- * Under Section 20 of the Hindu Succession Act, 1956, a child, who was in the womb at the time of the death of an intestate and who is subsequently born alive, shall have the same right to inherit to the intestate as if he or she had been born before the death of the intestate and the inheritance shall be deemed to vest in such a case with effect from the date of the death of the intestate. So the male child, who was in the womb at the time of the death of his father and who is subsequently born alive, is also entitled to a share in the properties of late

162. Ramalingeswara Rao is a big businessman, who is running a wholesale Kirana Shop in Hyderabad city. He has two branches, at Ameerpet and Dilsukhnagar. The business is in a flourishing stage. He has his wife, Santhamma, daughter, Prasuna and son, Murali. He performs the marriage of his son Murali with Revathi and after some time, they beget a son, Kiran Kumar. Subsequently, Murali, the son of Ramalingeswara Rao dies leaving behind his wife and son. Sometime thereafter, Ramalingeswara Rao also dies leaving behind him his wife Santhamma, daughter Prasuna and son's (Murali's) wife Revathi and grandson Kiran Kumar. Ramalingeswara Rao did not execute any will. The widowed daughter-in-law, Revathi and the grand son of Ramalingeswara Rao wanted to acquire the entire property on the ground that Murali, the son of Ramalingeswara Rao being his son is entitled to the entire property. However, wife and daughter of Ramalingeswara Rao want to run the business of Ramalingeswara Rao to the exclusion of his widowed daughter-in-law and grand son. What is the position?

- * The widowed daughter-in-law and grand son of Ramalingeswara Rao are together entitled to the share of his son, Murali. Since it is a joint business, under Section 22 of the Hindu Succession Act, 1956, when an interest in any business carried on by an intestate devolves upon two or more heirs specified in Class I of the schedule and any one of such heirs proposes to transfer his or her interest in the property or business, the other heirs shall have a preferential right to acquire the interest proposed to be transferred. Further, if there are two or more heirs proposing to acquire any interest, that heir who offers the highest consideration for the transfer shall be preferred. Under sub-section (2) of Section 22 in the absence of any agreement between the parties, the consideration for which any interest in the property of the deceased may be transferred shall be determined by the court.

163. Baburao has three sons, Jagadeesh, Suresh and Sunil. Jagadeesh, having studied in foreign country, (U.S.A.), settled there, and he is earning a lot. Another son, Suresh also is occupying high position in Central Government and is staying at New Delhi. Sunil did not bestow much interest towards education and he is staying with his parents at their native place, Razole.

Babu Rao is also having a lot of properties and is doing money lending business, besides, he is also having some fertile land. As Sunil does not have any work and as a vagabond, he is habituated to some bad habits, Babu Rao does not like him. He even used to express that he will give all his properties to his first two sons, Jagadeesh and Suresh. One day, Sunil asks for huge amount from his father. He refuses to give. Thereafter, thinking that his father may not give him any properties as is proclaiming Sunil administers poison to his father and kills him. However, during investigation it comes to light that Sunil is responsible for the death of his father and he is tried for the offence under Section 302 I.P.C. and ultimately gets convicted. Subsequently, his mother also dies. There remain Jagadeesh, Suresh and Sunil who is undergoing imprisonment in jail. Whether Sunil is entitled to any share in the properties of his father?

- * Under Section 25 of the Hindu Succession Act, 1956, a person, who commits murder or abets commission of murder shall be disqualified from inheriting the property of the person murdered or any other property in furtherance of the succession in which he or she committed or abetted the commission of the murder. As Sunil has committed the murder of his father, he is not entitled to any share in the properties of his father.

164. Srirama Murty married Radhakumari long back. They had no children. So, at the age of 55 years, Srirama Murty married another lady, Girija, who was aged about 25 years. She was a free moving lady. She developed a luxurious life and she used to spend huge amounts and move with persons of her choice. Srirama Murty did not like this and he warned her several times. During her movements, Girija developed illicit intimacy with Bhushana Rao, who was a rich man and leading an unchaste life. As Srirama Murty, her husband, was not giving her money for her luxurious life and he even was threatening to give away all his properties to his first wife by executing a will, Girija conspired with Bhushana Rao and at his advice, she administered poison and ultimately, Srirama Murty died. On suspicion, a case was registered by the police and during investigation, Girija and Bhushana Rao were found to be responsible for the death of Srirama Murty and so, a charge sheet was filed against them and after trial, the Sessions Court though gave a finding that Girija was leading an unchaste life ultimately, acquitted them for want

of sufficient evidence against them. After acquittal of the case, Girija claimed a share in the properties of Sri Rama Murty. Whether she is entitled to share?

- * Under Section 25 of the Hindu Succession Act, 1956, a person who commits murder or abets the commission of murder shall be disqualified from inheriting the property of the person murdered. But in the above case, Girija was acquitted by the criminal court and so she cannot be disqualified under Section 25. Though the criminal court gave a finding that she is unchaste, unchastity is no bar to inheritance. So, Girija is entitled to a share in the properties of late Srirama Murty.

165. Rama Rao and Vani are husband and wife. They are having one son, Kalyan and one daughter, Usha. Rama Rao has vast properties. Vani, the wife of Rama Rao also has some properties from her parents, which were given at the time of her marriage. They are all Hindus, Usha fell in love with one Christian boy and she converted herself as a Christian and married that Christian Boy. After some time, she begets a daughter, who is also treated as a Christian but Usha dies leaving her daughter. The mother of Usha, viz., Vani also died. After the death of Vani, the husband of Usha issues a registered notice to Rama Rao, claiming a share for his daughter in the properties of late Vani. Whether the daughter of Usha is entitled to any share in the properties of late Vani?

- * Under Section 26 of the Hindu Succession Act, 1956, where a Hindu has ceased or ceases to be a Hindu by conversion to another religion, children born to him or her after such conversion and their descendants shall be disqualified from inheriting the property of any of their Hindu relatives unless such children or descendants are Hindus at the time when the succession opens. So as Usha, the daughter of Vani converted herself as a Christian and after her conversion the daughter is born to her, who ceased to be a Hindu, she is disqualified from inheriting the property of her grand mother.

THE IDENTIFICATION OF PRISONERS ACT, 1920

(Act No. 33 of 1920)

166. Taking of measurements or photographs of an accused person

166. Many dacoities and robberies are being committed in and around Hyderabad city. Police received information that Kittu, Mallanna, Polugadu, who are ex-convicts, and their men are involved in those dacoities. Dr. Prahlada Rao gave a complaint to the police that during one night some thieves entered into his house and committed theft of gold ornaments, cash and other valuables and when he resisted, he was beaten by one of the culprits. He described the person who beat him by giving his height, colour, build, having little hair on the head and such other details. According to the police, the details given by the doctor related to Kittu, an ex-convict. The Police arrested Kittu and his associates but they were released on bail. However, the Police felt that the photos and measurements of Kittu and his associates are necessary for the investigation of the case.



Thereupon, the Inspector of Police filed an application before Magistrate to direct Kittu and his associates, to allow their measurements and photographs. But the accused Kittu and his associates resisted the petition stating that it is their fundamental right not to allow their photos and measurements to be taken by others and they objected to the same. Whether the Magistrate can order the photos and measurements of those persons to be taken?

- * Under Section 5 of the Identification of Prisoners Act, 1920, if the Magistrate is satisfied that for the purposes of any investigation or proceeding under the Code of Criminal Procedure, it is expedient to direct any person to allow his measurements or photographs to be taken, he may make an order to that effect and in that case the person to whom the order relates shall be produced or shall attend at the time and place specified in the order and shall allow his measurements or photograph to be taken by a Police Officer. So, under this section, if the Magistrate is satisfied that the measurements and photographs of those persons are necessary for the investigation of the case, he can direct and those persons shall allow their measurements and photos taken by a Police Officer.

15

THE INDIAN CONTRACT ACT, 1872

(Act No.9 of 1872)

167. *Acceptance of proposal*

168. *Lawful consideration*

169. *Contract by a Minor and its effect*

170. *Effect of a contract entered into by a person of unsound mind*

171. *Free consent*

172. *Misrepresentation*

173. *Lawful consideration*

174. *Agreement without consideration*

175 & 176. *Effect of agreement in restraint of marriage*

177. *Agreement restraining from exercising a lawful profession, trade or business*
178. *Agreement to enforce legal rights under the contract*
179. *Wager contract*
- 180 & 181. *Contingent contracts*
182. *Performance of contract*
183. *Non-acceptance of performance of promise*
184. *Contract putting to an end*
185. *Intention of the parties to a contract*
186. *Performance of the promise from a third person*
- 187 & 188. *Joint promise*
189. *Non-performance of contract within a specified time*
190. *Payment of one of the several debts in discharge of particular debt*
191. *Application of payment where debt to be discharged is not indicated*
192. *Application of payment where neither party appropriates*
193. *Effect of novation, rescission and alteration of contract*
194. *Promisee may dispense with or remit performance of promise*
- 195 & 196. *Claim for necessities supplied to a person incapable of contracting*
197. *Reimbursement of person paying money due by another in payment of which he is interested*
198. *Responsibility of finder of goods*
199. *Liability of person to whom money is paid by mistake*
200. *Compensation for loss or damage caused by breach of contract*
201. *Compensation for breach of contract where penalty is stipulated for*
202. *Rights of indemnity-holder when sued*
203. *Surety's liability*
204. *Continuing guarantee*
205. *Discharge of surety by variance in terms of contract*
206. *Co-sureties' liability to contribute*
207. *Bailor entitled to the increase or profit from goods bailed*

- 208. *Right of finder of goods*
- 209. *Defaulting pawnor's right to redeem*
- 210. *Agent's authority in an emergency*
- 211. *Liability of pretended agent*

167. Ravindranath married Swarnalatha. He was aged about 28 years and was working as Asst. Engineer in a Sugar Factory. One Life Insurance Agent approached Ravindranath and explained the benefits of taking an insurance policy and convinced him to take out an insurance policy for Rs. 5 lakhs. He was also examined by a qualified doctor for the same. Along with the proposal form, Ravindranath had given a cheque for Rs. 2,500/- being the first premium. The Agent took the proposal form along with the cheque representing the first premium and the medical certificate and submitted the same in the City Branch No.III, Hyderabad. The Insurance company accepted the proposal form and got the cheque encashed issued by Ravindranath and prepared the policy and it was duly signed by the officer concerned and thereafter, it was sent to the Despatching Section of that L.I.C. Branch for being sent to the insured Ravindranath. While the policy was thus in transit, Ravindranath met with an accident. While he was going to the factory as usual on his scooter a district bus came from behind him and hit his scooter as a result of which he fell down and the bus ran over him and he died. Thereafter, his wife, Swarnalatha claimed the policy amount of Rs. 5 lakhs by sending claim form enclosing the death certificate issued by the Births & Deaths Section of the Corporation. The Insurance company refused the claim of Swarnalatha on the ground that no policy was issued. Has she got any right to claim the insured amount from the Life Insurance Corporation?

- * Under Section 8 of the Indian Contract Act, 1872, performance of the conditions of a proposal or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal is an acceptance of the proposal.

As the Life Insurance company has accepted the proposal sent by Ravindranath and as they have also encashed the cheque and prepared and signed the insurance policy and it was also given for despatch and as it was under transit, when the insured Ravindranath died, the Life Insurance Company is



bound to pay the insured amount to the widow of Ravindranath and as the contract between the insured and the Life Insurance Company, is complete and accepted, the widow of Ravindranath can recover the policy amount from the Insurance Company.

168. Vishnuvardhan married Priyamvada. They had a son. After some time differences arose between them. Chandrabhushana Rao was a neighbour to Vishnuvardhan. He has a daughter, Snehalatha, aged about 24 years. Vishnuvardhan was highly educated, having studied M.Sc. and was working as a Lecturer. In fact, Chandrabhushana Rao wanted to give his daughter in marriage to Vishnuvardhan, but, without his knowledge the parents of Vishnuvardhan settled the marriage with Priyamvada. However, as differences arose between the couple and since Priyamvada left for her parents' house with her son, Chandrabhushana Rao took advantage of the same. He used to send his daughter to the house of Vishnuvardhan, sending some eatables, curries, etc. Finally, Chandrabhushana Rao pressurised Vishnuvardhan to marry his daughter and also agreed to give Rs. 50,000/- and immediately paid Rs. 25,000/- and executed a promissory note for the balance of Rs. 25,000/- and the marriage was performed. After some time, differences arose between Vishnuvardhan and Snehalatha also, as her father

did not give the balance of Rs. 25,000/- as promised. As he was armed with the promissory note executed by Chandrabhushana Rao, he filed a suit against him for recovery of Rs. 25,000/- together with interest. Can Vishnuvardhan recover the amount from Chandrabhushana Rao?

- * Under Section 10 of the Indian Contract Act, 1872, all agreements are contracts if they are made by the free consent of parties competent to contract for a lawful consideration and with a lawful object and are not hereby expressly declared to be void. So, one of the essentials of a valid contract is for a lawful consideration. As the consideration under the promissory note executed by Chandrabhushana Rao is the balance of dowry, it is opposed to public policy and it is not a lawful consideration. So, Chandrabhushana Rao cannot recover the amount under the promissory note. Further, the agreement entered into between Vishnuvardhan and Chandrabhushana Rao itself is void, as it is an offence under Section 494 IPC as having a wife living, he entered into a contract to marry the daughter of Chandrabhushana Rao. So, in any case, it is an invalid contract and the plaintiff, Vishnuvardhan cannot recover the amount based on such promissory note.

169. Kalyan is aged about 17 years. He was studying B.A. He was living in a hostel. He made friendship with several college mates who were all well-to-do persons and they were spending money lavishly. He also joined hands with them and started spending money for drinks, etc. The money that was being sent by his parents was not sufficient to meet his lavish expenses. His maternal grand father had bequeathed one acre of wet land, situated in his native place, in his favour by executing a registered will. He went to his native place and brought that registered will and approached a money lender, Gangaram and requested him to lend Rs. 5,000/- to him on the mortgage of his one acre of land bequeathed in his favour, by his maternal grand father, under the registered will. He also represented to Gangaram that he was aged more than 18 years. Gangaram lent the sum of Rs. 5,000/- to Kalyan and Kalyan executed a registered mortgage bond, in favour of the money lender Gangaram. After six months, as the amount was not repaid as promised, Gangaram filed a suit against Kalyan. Kalyan took a stand, among other contentions, that he was a minor at the time of executing the mortgage deed

and so, Gangaram cannot recover the amount lent by him on the mortgage of his land. Can Gangaram recover the amount of Rs.5,000/- and interest due thereon from Kalyan, by sale of mortgaged land?

- * Under Section 11 of the Indian Contract Act, 1872, every person is competent to contract who is of the age of majority according to the law to which he is subject and who is of sound mind and is not disqualified from contracting by any law to which he is subject. In other words, a minor cannot enter into a contract. A contract entered into by a minor is a void contract ab initio. However, contracts by minors are valid if they are made for necessities.

As in the above case, it is proved that the amount is borrowed by the minor for spending the same lavishly and not for his necessities, Gangaram is not entitled to claim restitution of the amount borrowed from him by Kalyan, who is a minor at the time of executing the mortgage bond.

170. Prathap and Giridhar are brothers. Unfortunately, both were of unsound mind. Prathap was a person who was usually of unsound mind but occasionally of sound mind. Giridhar was a person who was usually of sound mind but occasionally of unsound mind. As they were considered to be lunatics, Balaram took advantage of their position. He approached them and asked them to sell their 5 acres of land. They too agreed and they entered into an agreement of sale and subsequently, they also executed the sale deed in favour of Balaram. After completing the transaction, Somasundaram, the paternal uncle of Prathap and Giridhar came to know of this transaction and objected to Balaram taking possession of the land. What is the legal effect of the sale deed executed by Prathap and Giridhar?

- * Under Section 11 of the Indian Contract Act, 1872, a person of sound mind is alone competent to enter into a contract. That means, a person of unsound mind cannot enter into a valid contract. Under Section 12, a person is said to be of sound mind for the purpose of making a contract if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests. A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind. Similarly, a person who is usually of sound mind but

occasionally of unsound mind may not make a contract when he is of unsound mind. It was proved by expert evidence that Prathap was of unsound mind at the time of the execution of the sale deed and Giridhar was of sound mind. As the contract was entered into by Prathap at the time when he was of unsound mind, the contract entered with him is not valid and as the contract was entered into by Giridhar when he was of sound mind, the contract is valid so far as his share is concerned. So the sale deed obtained by Balaram in so far as the share of Prathap is concerned, is void and the sale deed in so far as the share of Giridhar is concerned, is valid and so, Balaram is entitled to half the share in the said land.

171. Narayana has got some properties. He married Rajeswari. After begetting a son, Rajeswari died. As Narayana was young in age and there was no female assistance in his family to look after the son, who was only one month old, the elders advised him to remarry. Accordingly, he married Seetha. Seetha had one minor brother and one minor sister. After marriage, she pressurised her husband, Narayana to gift some property to her brother and sister. She actually dominated the will of her husband by taking advantage of her relationship with him as his wife. Ultimately, at her instance and as per her desire, Narayana executed a sale deed in favour of the father of his wife, Seetha, as her brother and sister were minors, in respect of half of his landed property, putting a nominal sale consideration. After some time, the father of the first wife of Narayana, who happened to be maternal grandfather of the son born to Rajeswari, came to know of the sale transaction, questioned about the same. What is the effect of the sale?

- * Under Section 10 of the Indian Contract Act, 1872, all agreements are contracts if they are made by the free consent of the parties competent to contract. Under Section 14, consent is said to be free when it is not caused by, among other things, undue influence. Under sub-section (1) of Section 16 a contract is said to be induced by "undue influence" where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other. In other words, a person induced to enter into a contract by undue influence may treat the contract as voidable. Such a contract is voidable contract. As Seetha, the second

wife of Narayana has dominated the will of her husband and used that position to obtain unfair advantage to her brother and sister over her stepson, i.e., the son of Rajeswari, the first wife of Narayana, it is a clear case of using undue influence and so, the sale deed is liable to be set aside.

172. Chandrayya had five acres of wet land. As he was in need of money for his household expenses and also agricultural expenses, he mortgaged that land to Land Mortgage Bank and obtained a loan of Rs. 5,000/-. Even after two years, he did not discharge that loan and so the loan and interest were subsisting. While so, the mortgager, Chandrayya conceived an evil idea of disposing the property, as, if it were to be auctioned by the Bank, he would not get proper value and that his name and reputation would also be spoiled. So, he offered to sell his land which was subject to mortgage to Rudrayya, who was a resident of neighbouring village. He did not disclose the subsisting mortgage to the vendee. On the other hand, he misrepresented to him that the land was free from encumbrance. Believing the representation made by the vendor, Chandrayya, Rudrayya paid the entire sale consideration and obtained a registered sale deed. Thereafter, the Bank issued a notice to both Chandrayya, the original owner and also the subsequent purchaser, Rudrayya. Then, Rudrayya came to know of the misrepresentation made by Chandrayya. What is the effect of the contract?

- * Under Section 10 of the Indian Contract Act, 1872, all agreements are contracts if they are made by the free consent of the parties competent to contract. Under Section 14, consent is said to be free when it is not caused by, among other things, misrepresentation. Under Section 18, 'Misrepresentation' is defined as means and includes the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true. Under Section 19, when consent to an agreement is caused by misrepresentation, it is a voidable contract at the option of the party whose consent was so caused.

As Chandrayya has executed the sale deed in favour of Rudrayya fraudulently misrepresenting to him that the land is free from encumbrance though, in fact, it is subject to a mortgage in favour of Land Mortgage Bank. Rudrayya can

either avoid the contract or may insist on the mortgage debt to be redeemed.

173. Bhagwan Das has two houses. He is residing in one house and has let out the other one to a tenant. There is no furniture or fans in the house which is let out. But he has let out that house on a rent of Rs. 2,000/- saying that Rs. 1,000/- is the actual rent for the house and the remaining Rs. 1,000/- represents the rent for utilisation of his furniture, fittings and electrical equipments. He is accordingly giving receipts for Rs. 1,000/- towards the rent of the house to the tenant. This is being done by him to avoid the municipal tax. Subsequently, differences arose between the landlord and tenant and tenant paid only Rs. 1,000/- towards house rent and refused to pay the remaining Rs. 1,000/- which represents the rent for electrical and furniture fittings. The landlord approached the court for arrears of rent at the rate of Rs. 1,000/- which represents the balance of rent saying that the tenant is paying only half of the rent agreed. Can the landlord realise the balance of rent?

- * Under Section 10 of the Indian Contract Act, 1872, all agreements are contracts, if they are made, among other things, for a lawful consideration. Under Section 23, the consideration of an agreement is lawful unless it is forbidden by law or is of such a nature that, if permitted, it would defeat the provisions of any law or is fraudulent or involves or implies injury to the person or property of another or the court regards it as immoral or opposed to public policy. Where the consideration is said to be unlawful, such a contract is void. In the above case, as the landlord fixed the rent for the house at Rs. 1,000/- and the remaining Rs. 1,000/- towards furniture, fans etc., (which in fact were not provided) with the object of avoiding municipal tax, which is opposed to public policy and hence unlawful, the land lord cannot recover the balance of rent at the rate of Rs. 1,000/- per month from his tenant.

174. Ramayamma has got some immovable property. She has gifted the entire property in favour of her grand daughter, out of her love and affection towards her. Some time after the execution of the gift deed, Ramayamma died. After her death, her sons questioned the gift on the ground that the transaction is without consideration. What is the effect of the gift?

Under Section 25 of the Indian Contract Act, 1872, an agreement made without consideration is void unless it is expressed in writing and registered under the law for the time being in force, for the registration of documents and is made on account of natural love and affection between the parties standing in a near relation to each other. Under Explanation 1 to Section 25, it is stated that nothing in this section shall affect the validity as between the donor and donee of any gift actually made.

As Ramayamma has gifted her immovable property in favour of her grand daughter, on account of natural love and affection and the said gift is reduced into writing and also registered as required under law, it is a valid document and it cannot be questioned in any court of law by anybody.

175. Aruna was studying B.A. She fell in love with her classmate, Mourya. Aruna insisted Mourya to marry her. But he was postponing saying that, they must first complete their degree. Mourya also asked Aruna not to marry any other person till then. Aruna promised Mourya not to marry anyone other than Mourya who in turn, also swore not to marry any lady other than Aruna. But after completion of the degree, Aruna changed her mind and married Kranthi, who was an Engineering Graduate and a well-to-do man. Mourya filed a suit against Aruna for breach of contract. Whether it is maintainable?

Under Section 26 of the Indian Contract Act, 1872, every agreement in restraint of the marriage of any person, other than a minor, is void. So, the agreement entered into by Aruna not to marry anyone other than Mourya is one in restraint of marriage and so, it is void and it cannot be enforced.

176. Narender is a big industrialist. He has major shares in several big companies. He has one daughter, Visalakshi studying degree. Sekhar is an Engineering Graduate and is working as an Assistant Engineer in one of the companies in which Narender is the Managing Director. As Visalakshi, the daughter of Narender is a beautiful lady and also daughter of a big industrialist, he wanted to marry her. He gathered the intention of Narender. His intention was to give his daughter to a very big industrialist only. Sekhar approached a broker who is settling marriage alliances and asked him to arrange his marriage with Visalakshi and in

consideration thereof. he offered to give Rs. 50,000/-, as a reward. The broker successfully arranged the marriage. But, Sekhar refused to give the amount as promised by him to the broker. Thereupon, the broker filed a suit against Sekhar claiming the amount. promised by him. Is the broker entitled to claim the said amount?

- * Under Section 26 of the Indian Contract Act, 1872, every agreement in restraint of the marriage of any person, other than a minor, is void.

As moneys paid under a marriage brokerage contract are against public policy, and contracts to procure a wife in marriage for reward is unenforceable, the broker cannot get the amount claimed by him from Sekhar, as it is a void contract.

177. Chaganlal Jewellery Mart deals in gold jewellery. It has earned a very good name as it has been selling genuine gold and has been executing the orders and giving the jewellery, within the scheduled time. Thus, it has earned goodwill among the public. While the said company is in a flourishing stage, one of the partners separates from the partnership. At the time of discharge of the partner from the partnership firm, an understanding is made that the discharging partner should not do similar business within a radius of three kilometers, at least for a period of one year. Contrary to that, he starts a shop with the same name with some small change 'Chaganlal Jewellers' within one kilometer distance within six months after he is discharged from the partnership firm. Whether the action of the discharging partner in setting up a rival business with the same goodwill, contrary to the agreement, is valid?

- * Under Section 27 of the Indian Contract Act, 1872, every agreement by which any one is restrained from exercising a lawful profession, trade or business of any kind is to that extent void. But, under exception 1, one who sells the goodwill of a business may agree with the buyer to refrain from carrying on a similar business within specified local limits so long as the buyer or any person deriving title to the goodwill from him, carries on a like business therein; provided that such limits appear to the court reasonable, regard being had to the nature of the business.

So, under exception 1, a partner may agree not to carry on within specified local limits, a business similar to that carried on by the firm and contrary to the said agreement, if he carries on any such business, it can be questioned in a Court of Law.

178. Rama Medical Enterprises appointed Krishna Pharmaceuticals as its sole distributor for the medicines manufactured and supplied by it. One of the terms and conditions entered into between the two at the time of entering into an agreement was that in case of any dispute between them, such dispute should be referred to an arbitrator and the report or opinion of the arbitrator would be binding on them. After some time, a dispute arose with regard to supply of certain medicines and with regard to the dealership commission. Contrary to the terms and conditions entered into between the parties, the dealer, Krishna Pharmaceuticals approached the Court claiming commission and other ancillary reliefs. Whether the suit, as filed by Krishna Pharmaceuticals, is maintainable?

- * Under Section 28 of the Indian Contract Act, 1872, every agreement by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals or which limits the time within which he may thus enforce his rights is void to that extent. Under exception 1, this section shall not render illegal a contract by which two or more persons agree that any dispute which may arise between them



in respect of any subject or class of subjects shall be referred to arbitration and that only the amount awarded in such arbitration shall be recoverable in respect of the dispute so referred. Under Exception 2, this section shall not render illegal any contract in writing by which two or more persons agree to refer to arbitration any question between them which has already arisen or affect any provision of any law in force for the time being as to references to arbitration.

As there is a valid agreement between the parties to refer any dispute to arbitration and after that only the amount awarded in such arbitration shall be recoverable, the plaintiff, Krishna Pharmaceuticals cannot file a suit as the agreement bars filing of such a suit.

179. There is one Nizam Horse Club where horse races are being conducted regularly. One day, Diwakar participated in the horse race by betting money on a particular horse. The horse on which he bet, stood first in the race and Diwakar won the prize.. He has to get the prize amount of Rs. 1 lakh but he was not paid the amount, saying it is a wagering contract which is void. What is the position?

- * Under Section 30 of the Indian Contract Act, 1872, agreements by way of wager are void; and no suit shall be brought for recovering anything alleged to be won on any wager or entrusted to any person to abide the result of any game or other uncertain event on which any wager is made. But there is an exception to this. This section shall not be deemed to render unlawful a subscription or agreement to subscribe or contribute, made or entered into for or towards any plate, prize or sum of money of the value or amount of five hundred rupees or upwards to be awarded to the winner or winners of any horse-race. So, as under the exception, horse-race is not rendered unlawful, Diwakar is entitled to the prize amount.

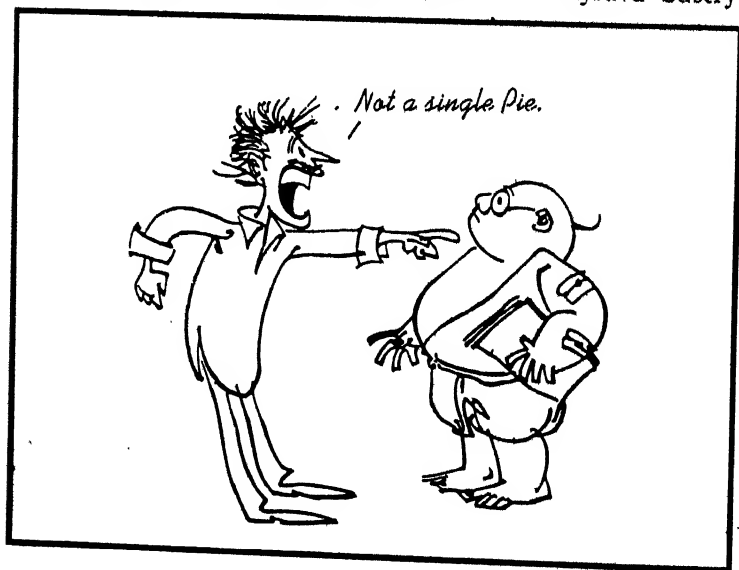
180. Paranjyothi has some immovable properties. He has a daughter, Renuka and a son, Parthasaradhi. Both are married. Renuka has a son, Shiva Kumar. Out of love and affection towards his daughter and grand son, Paranjyothi executes a will bequeathing two acres of wet land in favour of his grand son. He also gifts away one acre of wet land in favour of his daughter by a registered gift deed. The two acres of land bequeathed under the "will" will go to the grand son, Shiva Kumar after the death

of Paranjyothi but the one acre of land gifted under the gift deed to his daughter, Renuka is immediately delivered. The grandson, Shiva Kumar enters into an agreement with a third party, Nandakumar agreeing to sell the land bequeathed in his favour by his grand father. What is the effect of the contract entered into, by Shiva Kumar with Nandakumar?

- * Under Section 32 of the Indian Contract Act, 1872, contingent contracts to do or not to do, anything if an uncertain future event happens cannot be enforced by law unless and until that event has happened.

As Shiva Kumar will become full owner of the two acres of land bequeathed under a will by his grand father only on the death of the testator, Paranjyothi. As long as Paranjyothi is alive, Shiva Kumar will not get any rights under the will. Thus, the contingent contract becomes enforceable only when the testator dies and not before. Till the death of the testator, Shivakumar cannot enter into agreement with anybody to sell that land.

181. Krishna Prasad is aged about 28 years and is a bachelor. He approaches Bhyrava Sastry, a broker of marriage alliances and asks him to arrange his marriage with Sarada, daughter of a big industrialist and if he arranges the alliance with that girl, Krishna Prasad would pay Rs. 5,000/- to Bhyrava Sastry.



Subsequently, Sarada is given in marriage to another person, Chaitanya Prasad. What is the effect of the contract entered into by Krishna Prasad with Bhyrava Sastry?

- * Under Section 34 of the Indian Contract Act, 1872, if the future event on which a contract is contingent is the way in which a person will act at an unspecified time, the event shall be considered to become impossible when such person does anything which renders it impossible that he should so act within any definite time or otherwise than under further contingencies.

The contract entered into by Krishna Prasad with Bhyrava Sastry is that, the former will pay to the latter, a sum of Rs. 5,000/- if the latter can arrange the marriage of Sarada with the former, i.e., Krishna Prasad. Since Sarada was married to another man by her father, the contract will be impossible and consequently, the contract fails and Krishna Prasad need not pay anything under the contract to Bhyrava Sastry.

182. Hari Prasad has got a house site measuring 300 sq. yards. He enters into an agreement with a Head Mastry for the construction of a house. It is agreed between the parties that the Head Mastry shall construct the house as per the plan approved by Hari Prasad within four months and on completion of the construction, Hari Prasad shall pay Rs. 5 lakhs. As per the agreement, the Head Mastry constructs the house. But before delivering possession of the constructed house to Hari Prasad, Hari Prasad dies. The sons of Hari Prasad refuse to pay the amount agreed to be paid by their father. Can the Head Mastry recover the amount from the sons of Hari Prasad?

- * Under Section 37 of the Indian Contract Act, 1872, the parties to a contract must either perform or offer to perform their respective promises, unless, such performance is dispensed with or excused under the provisions of the Indian Contract Act or of any other law and promises bind the representatives of the promisors in case of the death of such promisor before performance unless a contrary intention appears from the contract.

As the Head Mastry has completed construction of the house as per the agreement entered by him with Hari Prasad, after the death of Hari Prasad, his sons, who are his L.Rs are bound

to pay the amount to the Head Mastry as agreed by their father, Hari Prasad and the Head Mastry can recover the amount from the L.Rs. of the deceased Hari Prasad.

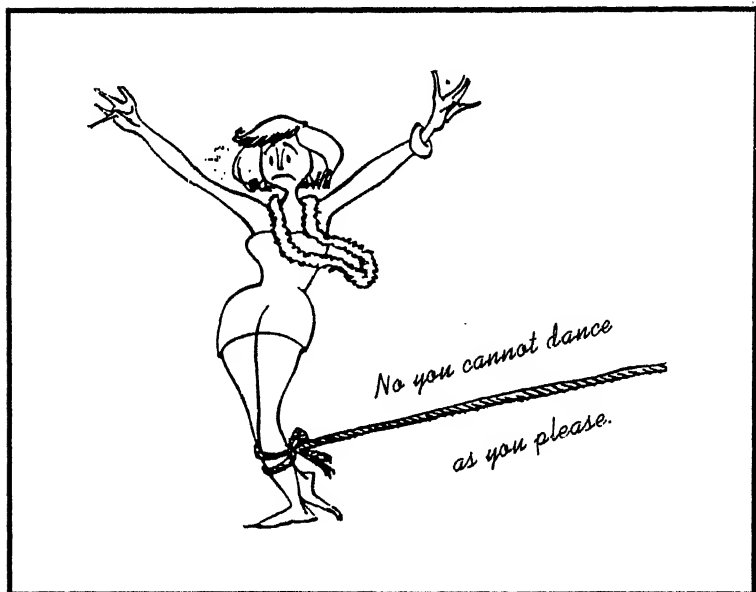
183. A contract was entered into between Pratap and Suresh that Suresh should supply 100 quintals of tamarind within three months and Pratap agrees to pay Rs. 5,000/- at the time of delivery of the tamarind. On the due date, Pratap went to Suresh with the money but he found that Suresh had died. The employees of Suresh promised to supply the tamarind and requested some more time. They did not supply within that time also. Then, Pratap issued a notice to the employees of Suresh. Even then, they failed to deliver the tamarind as promised by Suresh. Then Pratap filed a suit. What is the effect of the suit?

- * Under Section 38 of the Indian Contract Act, 1872, where a promisor has made an offer of performance to the promisee and the offer has not been accepted, the promisor is not responsible for non-performance nor does thereby lose his rights under the contract. The employees of Suresh are bound to supply the tamarind as per the agreement to Pratap.

184. Mydhili, a Kuchipudi dancer entered into an agreement, with the proprietor of an auditorium to give dance performance on alternate days and that she should be given Rs. 500/- per programme. There was another dancer Ragini, who was a dancer in Bharata Natyam. She also entered into a contract with the proprietor of the auditorium to give performances on the other alternative days. She also agreed to be paid the same remuneration. One day, Mydhili did not attend the auditorium for giving performance and on enquiry, it came to light that she went to Madras to give performance on payment of heavy amount, in connection with a marriage party. The other dancer, Ragini also did not attend the auditorium in the same week for giving performance and on the next day, she went to the proprietor and informed that as her husband was seriously ill she had to accompany him to the hospital and she could not attend the performance. She requested that she be excused and permitted to continue. Mydhili did not turn up. The proprietor cancelled the contract with Mydhili but permitted Ragini to continue in service. How far is he justified in doing so?

- * Under Section 39 of the Indian Contract Act, 1872, when a party to a contract has refused to perform or disabled himself

from performing his promise in its entirety, the promisee may put an end to the contract unless he has signified by words or conduct his acquiescence in its continuance.



As Mydhili has wilfully absented herself from giving performance, the proprietor of the auditorium is at liberty to put an end to the contract. But, in the case of Ragini, as her absence is justifiable, the proprietor cannot repudiate the contract.

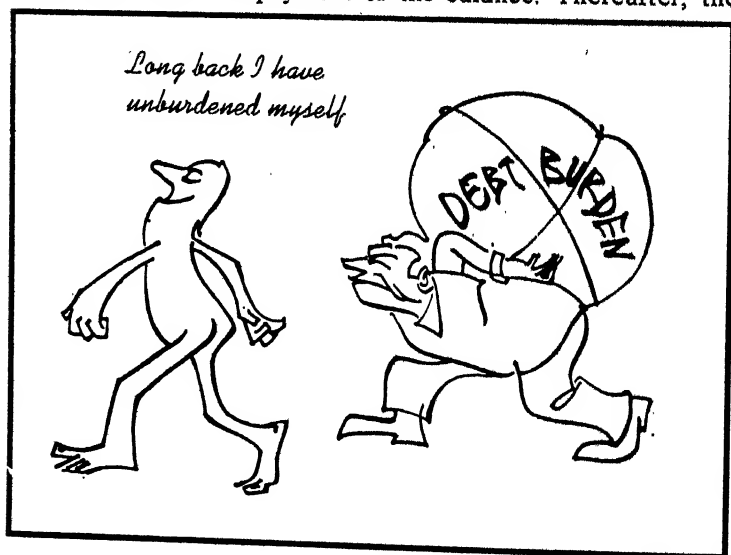
185. Vishnu Varma is a noted painter. The portrait of a retired High Court Judge was decided to be put in the Bar Association. Thereupon, the Secretary of the Bar Association requested Vishnu Varma to paint the portrait of the retired Judge personally and they agreed to give him a substantial remuneration for the same. Vishnu Varma agreed to this. But, he entrusted the painting work to his students and the portrait was delivered by the due date. But it was not to the satisfaction of the members of the Association. On enquiry, it came to light that he did not personally paint the portrait but it was entrusted to his students. Whether the painter, Vishnu Varma is entitled to the remuneration as agreed?

* Under Section 40 of the Indian Contract Act, 1872, if it appears from the nature of the case that it was the intention

of the parties to any contract that any promise contained in it should be performed by the promisor himself, such promise must be performed by the promisor.

As in the above case, Vishnu Varma, the painter was specifically asked to paint the portrait of the retired judge personally and contrary to the said agreement he has entrusted the painting of that portrait to his students who could not paint the same to the satisfaction of the members of the Bar Association, there is failure in the performance of the contract and so, the painter is not entitled to the remuneration, as per the agreement.

186. Bhaktavatsalam has got two sons, Anand and Bharat. Anand entered into cine-field and produced a picture which ended in loss. Anand had to execute several promissory notes. Even though the stipulated time was over, he could not repay the amounts borrowed by him under the promissory notes. Thereupon, the persons who gave loans, gave registered notices to Anand threatening to file civil suits. On coming to know about the threatened suits, Bhaktavatsalam, the father of Anand assured the creditors that he would pay the amount due by his son within a month and the creditors also agreed to it. Bhaktavatsalam also made some part payments. The creditors took the part payments made by him and accepted the request made by him, granting some more time for payment of the balance. Thereafter, the



creditors filed a suit against Anand for recovery of the amounts due by him. Is he liable for the amounts?

- * Under Section 41 of the Indian contract Act, 1872, when a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor. So, as the creditors having accepted the part payments made by Bhakatavatsalam on behalf of his son, Anand and having agreed to receive the balance from him alone after some time, the creditors cannot proceed against the original promisor, Anand.

187. Hanuman Prasad and Saradhi are good friends. One day, both go to their common friend, Purnachandra Rao, who is doing cloth business. While they are chitchating, Purnachandra Rao requested both of his friends to give him Rs. 50,000/- each as additional capital for the business and they agree. On the same day, they give Rs. 10,000/- each and also give a letter to that effect. Within one month thereafter, Hanuman Prasad died and his son however paid another Rs. 10,000/- and asked him to come after three months. Saradhi also paid another sum of Rs. 10,000/- and thereafter he died without paying the balance, leaving his son. Whether the sons of both Hanuman Prasad and Saradhi, who are their respective legal representatives, liable to fulfil the promise made by their respective fathers?



- * Under Section 42 of the Indian Contract Act, 1872, when two or more persons have made a joint promise, then unless a contrary intention appears by the contract, all such persons during their joint lives and after the death of any of them his representative jointly with the survivor or survivors and after the death of the last survivor, the representatives of all jointly must fulfill the promise. So, under Section 42, the legal representatives of both Hanuman Prasad and Saradhi are liable to pay the balance of the amounts as promised by their respective fathers.

188. Babu Rao is working as Senior Assistant in the office of the Registrar of the Co-operative Societies. He is a subscriber to Margadarsi Chit Funds subscribing at the rate of Rs. 500/- per month. After paying subscriptions regularly for 10 months, he participates in the bid and he becomes the highest bidder. For receiving the amount, he has to obtain the signatures of two sureties. Then he requests his colleagues, Kantha Rao, Junior Assistant and Kondala Rao, Typist to stand as sureties for him. He is a colleague working along with them and they agree and sign the surety bonds. Thereupon, Babu Rao receives the amount. He has still to pay 40 instalments. But after receipt of the amount, he discontinues payment of the instalments. Thereupon, Margadarsi Chit Fund company after issuing notices files a suit against Babu Rao, the principal borrower and his sureties Kantha Rao and Kondala Rao. The suit is decreed. The company has filed execution petition against the sureties. To avoid unpleasantness, both the sureties pay the decretal amount. Whether they are entitled to recover the amount paid by them from the principal borrower Babu Rao?

- * Under Section 43 of the Indian Contract Act, 1872, when two or more persons make a joint promise, the promisee may, in the absence of express agreements to the contrary, compel any one or more of such joint promisors to perform the whole of the promise. Under the explanation to Section 43, if the surety has made the payments on behalf of the principal borrower, he can recover the amount paid by him from the principal borrower.

As Babu Rao, the principal borrower has failed to pay the amount received by him from the Margadarsi Chit fund company and as his sureties, Kantha Rao and Kondala Rao

have paid the amounts payable by Babu Rao, Kantha Rao and Kondala Rao are entitled to recover the amounts paid by them to the Chit Fund Company from Babu Rao.

189. M/s. Krishna Rice Mill entered into an agreement with Rama Wholesale Rice & Grain Merchants for the supply of 100 bags of rice. It was agreed between the two parties that the 100 rice bags should be supplied within 30 days in three instalments, i.e., 35 bags in first ten days, 35 bags in the next 10 days and the remaining 30 bags in the last ten days. As per the agreement, M/s. Krishna Rice Mill supplied the first consignment. But the second consignment was not supplied by the end of 20th day as per the agreement. However, the agent of M/s. Krishna Rice Mill approached Rama Wholesale Rice & Grain Merchants requesting them to grant ten more days to supply the 35 rice bags along with 30 bags which were to be delivered within 30 days. The whole sale dealers agreed. As per the demand of the Rice Mill agent, the wholesale dealers paid an advance of Rs.40,000/-. Krishna Rice Mill did not supply the 35 bags for which time was extended and also, the 30 bags which were to be supplied within 30 days. Thereupon, Rama Wholesale Rice & Grain Merchants issued a registered notice and thereafter they also filed a civil suit for recovery of the advance paid by them after deducting the value of the rice bags already supplied and for damages. Whether the whole sale dealers, Rama Wholesale Rice & Grain Merchants are entitled to a decree?

- * Under Section 55 of the Indian Contract Act, 1872, when a party to a contract promises to do a certain thing at or before a specified time or certain things at or before specified time, the contract, or so much of it as has not been performed becomes voidable at the option of the promisee if the intention of the parties was that, time should be the essence of the contract.

In a commercial contract for sale of goods, time is deemed to be the essence of the contract. Any default on the stipulated day, will make the contract voidable at the option of the promisee. As M/s. Krishna Rice Mill has committed default in supplying the rice bags, as agreed, even by the extended time, as the contract is voidable at the option of the promisee, Rama Wholesale Rice & Grain Merchants and as they wanted to cancel the agreement, they are entitled for the refund of the

advance paid by them after deducting the value of the goods supplied.

190. Prasada Rao borrowed a sum of Rs. 5,000/- from a money lender, Chiranjeevi Rao and executed a promissory note on 1-2-1991. While the said debt was still subsisting, Prasada Rao felt need for some more money and he again approached Chiranjeevi Rao for another Rs. 3,000/- and accordingly, Chiranjeevi Rao gave that amount to Prasada Rao and obtained another promissory note on 24-6-1993. As the promissory note dated 1-2-1991 executed by Prasada Rao was about to expire shortly, the money lender, Chiranjeevi Rao issued a registered notice to Prasada Rao demanding payment of the amount due under promissory note dated 1-2-1991. Prasada Rao accordingly sent the amount to Chiranjeevi Rao. But Chiranjeevi Rao appropriated the amount sent by Prasada Rao towards the debt due under promissory note dated 24-6-1993. Can Chiranjeevi Rao do so?

- * Under Section 59 of the Indian Contract Act, 1872, where a debtor, owing several distinct debts to one person, makes a payment to him, either with express intimation, or under circumstances implying, that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly. So, as Chiranjeevi Rao has issued demand notice calling for Prasada Rao to make payment under the promissory note, dated 1-2-1991, and pursuant to the said demand notice Prasada Rao has sent the amount payable under the promissory note, dated 1-2-1991, Chiranjeevi Rao, the money lender must apply the said payment to the discharge of the debt demanded under the registered notice and not for a subsequent debt.

191. Ramabrahman borrowed a sum of Rs. 3,000/- from a money lender, Lakshmipathi Rao on 27-5-1990 and executed a promissory note. After some time, he again borrowed another sum of Rs. 3,000/- on 1-5-1991 from the same money lender, Lakshmipathi Rao and executed another promissory note. In January 1993, Ramabrahman sent Rs. 3,000/- in discharge of the promissory note but he did not mention to which promissory note the amount had to be appropriated. The creditor, Lakshmipathi Rao appropriated the amount sent by the debtor, Ramabrahman in discharge of the latter promissory note dated 1-5-1991

subsequently, as the promissory note dated 27-5-1990 became time-barred, the money lender, Lakshmipathi Rao filed a suit. In the suit, the defendant, Ramabrahman took the contention that even though he had sent the amount in discharge of the first promissory note, the plaintiff appropriated the same in discharge of the latter promissory note. What is the effect of that contention?

- * Under Section 60 of the Indian Contract Act, 1872, where the debtor has omitted to intimate and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor whether its recovery is or is not barred by the law in force for the time being as to the limitation of suits.

As Ramabrahman has sent the amount without indicating to which promissory note the said amount has to be applied, Lakshmipathi Rao is at liberty to apply the same, to any lawful debt due from Ramabrahman. His action cannot be questioned as he is protected by Section 59 of the Indian Contract Act.

192. Bheema Rao approached Koteswara Rao for a loan of Rs. 2,000/- and Koteswara Rao agreed and accordingly, he gave a loan of Rs. 2,000/- on 5-10-1992 and Bheema Rao executed a promissory note on the same day. Subsequently, one year thereafter, Bheema Rao again approached for a loan of another Rs. 2,000/-, without discharging the earlier debt, pleading that the amount was required for the urgent medical treatment of his wife, who was seriously ill. As Bheema Rao was a respectable man, Koteswara Rao again lent another sum of Rs. 2,000/- and obtained another promissory note on 24-2-1993. After six months, Bheema Rao sent Rs. 2,500/- in discharge of the amounts due to Koteswara Rao under the promissory notes. However, he did not indicate to which promissory note that amount had to be applied. Koteswara Rao also did not apply that amount in discharge of any of the promissory notes but simply passed an acknowledgement. How the amount has to be appropriated?

Under Section 61 of the Indian Contract Act, 1872, where neither party makes any appropriation, the payment shall be applied in discharge of the debts in order of time, whether they are not barred by the law in force for the time being as to the limitation of suits. If the debts are of equal standing, the

payment shall be applied in discharge of each proportionately. So, as neither the debtor, Bheema Rao nor the creditor, Koteswara Rao has made an appropriation indicating to which promissory note the amount has to be adjusted, the payment shall be applied in discharge of the debts in order of time, i.e., the earlier debt will be treated as first discharged, then the next debt and so on upto the amount paid by the debtor.

193. Ratna Prasad borrowed a sum of Rs. 10,000/- from Dhanpal, a money lender on 24-1-1990 and executed a promissory note. As the promissory note was getting time barred, the money lender issued a demand notice to the debtor, Ratna Prasad for payment of the amount due, lest the creditor would file a suit. As Ratna Prasad had no money and if the amount due under the promissory note was not paid, Dhanpal would certainly file a civil suit for recovery of the amount, Ratna Prasad proposed to mortgage his house in favour of Dhanpal and he accordingly approached him and told him about the mortgage of his house to him in discharge of the pronote debt. Dhanpal agreed for the proposal and he obtained a registered simple mortgage deed in his favour. Subsequently, Dhanpal with a malafide intention filed a suit on the strength of the promissory note. Whether Dhanpal is entitled to a decree?

- * Under Section 62 of the Indian Contract Act, 1872, if the parties to a contract agree to substitute a new contract for it or to rescind or alter it, the original contract need not be performed.

As Dhanpal has obtained a mortgage deed for the debt due under the promissory note under which Ratna Prasad has borrowed the amount and did not repay the same, the mortgage deed extinguishes the old promissory note. So, Dhanpal cannot be entitled to a decree in the suit filed on the strength of the old promissory note.

194. Kodandaram has got a big mango garden. There was a very good mango crop in the year 1993. On seeing the mangoes, one mango fruit merchant, Sundara Rao approached Kodandaram and requested him to sell the mango crop. Kodandaram agreed to sell the entire crop but the amount was not fixed. When the mangoes were in the early stage, there was a big cyclone and most of the mangoes dropped down. Subsequently, Sundara Rao

got the mangoes plucked and sold them and gave Rs. 2,000/- to Kodandaram. Subsequently, some enemies of Sundara Rao, who competed with Sundara Rao to purchase the mango crop from Kodandaram, told Kodandaram that Sundara Rao sold the mangoes plucked from his garden for a huge profit and he earned more than Rs. 10,000/-. Then, Kodandaram approached Sundara Rao and demanded him to pay Rs. 5,000/- more. Whether Sundara Rao is liable to pay the amount demanded by Kodandaram?

- * Under Section 63 of the Indian Contract Act, 1872, every promisee may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance or may accept instead of it any satisfaction which he thinks fit.

As Kodandaram has accepted Rs. 2,000/- given by Sundara Rao towards the value of the mangoes, it amounts to discharge of the whole debt due under the contract to Kodandaram and so, he cannot again claim more amount under the very same contract.

195. Vedantha Rao has two sons, Hari and Giri. Hari who was aged about 19 years was a lunatic. Giri was aged about 8 years. Hari was being treated by a psychiatrist and as per his prescription Vedantha Rao used to purchase medicines from Devi Medical Shop. As he was purchasing medicines from Devi Medical Shop regularly, Devi Medical Shop owner allowed credit facility to Vedantha Rao. After six months, an amount of Rs. 3,000/- became due to be paid by Vedantha Rao to Devi Medical Shop towards the value of the medicines purchased by Vedantha Rao for the treatment of his lunatic son, Hari. He was a middle class employee. He admitted his second son Giri in a convent school and he took cloth from Rama Cloth Merchants for stitching dresses for his son Giri, on credit and an amount of Rs.1,000/- was due by Vedantha Rao to the said cloth shop. While so, Vedantha Rao died leaving his wife, lunatic son, Hari and minor son, Giri. Both the shop owners, Devi Medical Shop and Rama Cloth Shop, approached the wife of Vedantha Rao and demanded the amounts due by her husband. But she said that the amounts are due by her husband and he was no more and that she need not pay the amounts. Whether the owners of both the shops are entitled to claim the amounts due by Vedantha Rao from his wife?

Under Section 68 of the Indian Contract Act, 1872, if a person, incapable of entering into a contract, or anyone whom he is legally bound to support, is supplied by another person with necessities suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person. So, as Devi Medical Shop has supplied medicines for Hari, the lunatic son of Vedantha Rao, which are necessary for his health and also as Rama Cloth Shop supplied the cloth for Giri which is necessary to him for going to convent, the wife of Vedantha Rao is liable to pay the amounts payable to the respective shops.

196. Bhupathi is a lunatic. He is aged about 20 years. He has some properties, having been bequeathed in his favour by his maternal grand father. He is being regularly given medical treatment. As the boy, Bhupathi is a lunatic, his cousin used to take him to the psychiatrist and purchase medicines as prescribed by the doctor. His cousin incurred an amount of Rs. 5,000/- towards doctor's fees and medicines. The entire amount is covered by receipts. Bhupathi recovers his health after using the medicines. When his cousin asks for the amount spent by him, Bhupathi refuses to pay. Thereupon, he files a suit. Whether Bhupathi is liable to pay the amount to his cousin?

* Under Section 68 of the Indian Contract Act, 1872, if a person, incapable of entering into a contract, or anyone whom he is legally bound to support, is supplied by another person with necessities suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.

As the cousin has invested money for the medical treatment of Bhupathi, who is a lunatic and the medical bills and fees receipts are also available, which are necessities for the treatment of Bhupathi, the cousin is entitled to be reimbursed from Bhupathi's property, the amount spent by him towards medical treatment of Bhupathi for his lunacy.

197. Mahipathi is the owner of Ac. 10.00 of wet land. He took a loan of Rs. 10,000/- from the State Bank of India, Agricultural Branch for the improvement of the said land and with that money he brought his land under the ayacut of Nagarjuna Sagar. As he

is residing in Hyderabad, he gave that land on lease to Subbaiah. The tenant used to raise crops and give the rents regularly to the landlord, Mahipathi. Mahipathi does not pay any amount in discharge of the loan taken by him from the State Bank of India. The Bank gives a registered notice to the landlord and even then, he does not pay the amount due. The bank gets the standing paddy crop raised by the tenant attached for the realisation of the amount due to it, by the landlord, Mahipathi. As the standing paddy crop is ready for harvest and as the bank people do not allow the tenant, who raised the crop unless the amount due by his landlord is paid, the tenant pays the entire amount due by the landlord, Mahipathi and gets the attachment released. Later on, the landlord comes and as usual insists on payment of the rent. When the tenant says that he paid the entire amount payable by him (land lord) to the Bank, and so, he will pay the balance of rent alone, the landlord does not agree and insists for payment of the full rent. Whether the tenant, Subbayya is entitled to claim reimbursement of the amount paid by him on behalf of the landlord to the Bank?

- * Under Section 69 of the Indian Contract Act, 1872, a person, who is interested in the payment of money, which another is bound by law to pay, and who, therefore pays it, is entitled to be reimbursed by the other. So, as the tenant, Subbayya has paid the loan amount payable by the landlord, Mahipathi and as the standing paddy crop was attached by the Bank for realisation of the loan amount payable by the landlord and to prevent the said attachment and consequential sale, as the tenant has paid the loan amount to the Bank on behalf of the landlord, and so, the tenant is entitled to claim reimbursement of the amount paid by him and he can adjust the same in the rent payable by him to the landlord.

198. Arunachalam is a resident of Chittoor. He is going to Madras in an Express Train. Along with him, he takes a suit case containing his clothes, cash of Rs. 10,000/- and some valuable documents and agreements. He keeps his diary and visiting cards in the said suit case. While travelling in the train, one Kesavachari occupies the seat by his side. When the train stops at a particular station, Arunachalam gets down to fetch water and asks his neighbour to take care of his suit case. While he is filling water, the train moves out and he is not able to catch the train. Immediately thereafter, he catches the next train and at Madras,

he enquires about the suit case but there is no trace. Then, he makes a complaint to the police. Kesavachari, the co-passenger takes the suit case to his house. During investigation, the police approach the house of Kesavachari and enquire about the suit case. Though he admits that he has taken the suitcase left by one passenger in the train and it is found by him, and it need not be returned and with that understanding, he says that though the address of the owner of the suit case is available in the suit case, he did not send the suit case or give information to the owner of the suit case. Whether Kesavachari is liable to return the suit case to its owner?

- * Under Section 71 of the Indian Contract Act, 1872, a person who finds goods belonging to another and takes them into his custody is subject to the same responsibility as a bailee. So, as Kesavachari has found the suit case left by Arunachalam and having opened it and come to know of his address, he must find out the owner and he can retain the suit case with him, till the owner comes. He should not use the contents of the suit case for his own purposes. His position is similar to a bailee. If he misappropriates the contents of the suit case, he is liable for an offence under Section 403 IPC. When the owner comes, he should return the same to the owner.

199. Swathi Mining company took a mining lease. Interpreting one clause in the Mining Act they paid cess on dead rent and subsequently, it was clarified by the Government that so much amount alone has to be paid. As Swathi Mining Company had paid excess amount under mistake of law, the company claimed refund of the excess amount. Whether the company is entitled to claim refund of the excess amount paid?

- * Under Section 72 of the Indian Contract Act, 1872, a person to whom money has been paid or anything delivered, by mistake or under coercion, must repay or return it. So, as Swathi Mining Company has paid excess cess under a mistake of law, the company is entitled to claim refund of the excess amount, so paid.

200. Gayatri Rice Mills agreed to supply 100 bags of fine rice to Dhanalakshmi Rice and Grain Merchants at the rate of Rs. 700/- per bag. However, no time limit is fixed hoping that the bags will be supplied within reasonable time. After they entered into the contract, the price of rice considerably increased. So,

Gayatri Rice Mills have refused to deliver the 100 bags of rice as agreed. Can Dhanalakshmi Rice and Grain Merchants claim any compensation from Gayatri Rice Mills for not supplying the rice bags as per the contract?

- * Under Section 73 of the Indian Contract Act, 1872, when a contract has been broken, the party who suffers by such breach is entitled to receive from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach or which parties knew when they made the contract to be likely to result from the breach of it.

As Gayatri Rice Mills have failed to supply the rice bags to Dhanalakshmi Rice & Grain Merchants, as per the contract, and thereby committed breach of the contract, under Section 73 of the Indian Contract Act, 1872, Dhanalakshmi Rice & Grain Merchants are entitled to claim compensation from Gayatri Rice Mills.

201. Hanmandas was arrested by police for an alleged offence under Section 411, I.P.C., for having found a stolen gold ring in possession and was remanded to judicial custody. Hanmandas applied for bail and the court granted bail on condition of his executing a personal bond for Rs. 1,000/- for his appearance. Hanmandas, accordingly executed a bail bond for the said amount and he was released on bail. Thereupon, after investigation, charge sheet was filed and summons were issued to the accused Hanmandas for his appearance in court on 5-10-1993. Having received the summons, Hanmandas failed to attend the court. Thereupon, the court cancelled his bail bond and called upon him to pay the amount of Rs. 1,000/-, the value of the bail bond, executed by him. Whether he is liable to pay the said amount?

Under Section 74 of the Indian Contract Act, 1872, when a contract has been broken, if a sum is named in the contract as the amount to be paid in the case of such breach or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract, reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for. Hanmandas

has executed the bail bond undertaking to appear as and when he is directed to appear, before the court and on his failure to attend the court on that particular day prepared to pay a sum of Rs. 1,000/-. And as he failed to attend the court on 5-10-1993 on which day he was called upon to appear in court thereby, committed breach in the said contract. Therefore, the court is entitled to forfeit the bond and call upon the accused Hanumandas to pay such amount, as the court may consider necessary, not exceeding Rs. 1,000/-.

202. Raghunandan Rao has a son Kiran Kumar, aged about 17 years. Raghunandan Rao has got five acres of wet land. For family necessities, he sold two acres of land to Haragopal. By abundant caution, as Raghunandan Rao had a minor son, aged about 17 years, Haragopal insisted the vendor, Raghunandan Rao to give an indemnity to the effect that in case, the sale transaction was held to be void by the court, the vendor had to give back the entire sale consideration paid by him together with interest at 15% P.A. Raghunandan Rao agreed and ultimately, the sale deed was executed. After two years, Kiran Kumar, the son of Raghunandan Rao became a major and questioned the sale transaction made by his father, in a court and the court, after trial, set aside the sale transaction. Haragopal claimed for the amount paid by him together with interest and registration expenses from Raghunandan Rao. Whether he is entitled to claim the amount?

- * Under Section 125 of the Indian Contract Act, 1872, the promisee in a contract of indemnity, acting within the scope, of his authority, is entitled to recover from the promisor (1) all damages which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnity applies; (2) all costs which he may be compelled to pay to any such suit if, in bringing or defending it, he did not contravene the orders of the promisor and acted as it would have been prudent for him to act in the absence of any contract of indemnity, or if the promisor authorised him to bring or defend the suit; (3) all sums which he may have paid under the terms of any compromise of any such suit, if the compromise was not contrary to the orders of the promisor and was one which it would have been prudent for the promisee to make in the absence of any contract of indemnity, or if the promisor authorised him to compromise the suit.

As the sale deed executed by Raghunandan Rao was held to be void, the vendee, Haragopal can recover from the vendor Raghunandan Rao the sale consideration, interest thereon at 15% P.A., as agreed between the two parties and all costs and expenses incurred by the vendee, Haragopal from Raghunandan Rao.

203. Govardhan got five acres of land. He approached State Bank of India, Agricultural Branch for a loan of Rs. 5,000/- for the improvement of the land. The Bank insisted on a surety for payment of the loan, sanctioned by the Bank. Thereupon, he requested his neighbour, Tilak; who was a government employee to stand as surety for the loan sanctioned by the Bank. Tilak agreed and he obtained his salary certificate and gave it to Govardhan and also executed the surety bond. Thereupon, the Bank released the loan amount to Govardhan. Two years elapsed and still, Govardhan did not repay the loan amount. Then, the Bank filed a suit against the principal borrower, Govardhan and the surety, Tilak. Whether Tilak is liable to pay the amount?

- * Under Section 128 of the Indian Contract Act, 1872, the liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract.

As Govardhan has failed to discharge the loan for which Tilak guaranteed by executing the surety bond, under Section 128 of the Indian Contract Act, the surety Tilak is liable to pay the amount as the surety's liability is co-extensive.

204. Bhavani Prasad is running cloth business. He approaches a whole sale cloth merchant and requests him to supply cloth on credit. The whole sale dealer agrees to supply cloth provided one of his old customers guarantees the payment of the price of the cloth supplied by him to Bhavani Prasad. Thereupon, Bhavani Prasad approaches Lakshmi Prasad, another old customer of the whole sale dealer and requests him to give guarantee for him for the cloth supplied by the whole-sale dealer, and Lakshmi Prasad executes a guarantee bond also. Thereupon, the whole-sale merchant used to supply cloth to Bhavani Prasad off and on and Bhavani Prasad used to make payments. After one year, Bhavani Prasad starts committing defaults in payment of the amount. Lakshmi Prasad comes to know of the defaults committed by Bhavani Prasad and so, he gives a notice to the whole sale merchant as well as Bhavani Prasad revoking the guarantee from

the date of receipt of the said notice by the whole sale dealer. In spite of the receipt of the said notice, the whole sale dealer supplies cloth on credit to Bhavani Prasad. Bhavani Prasad falls in arrears to a tune of Rs. 25,000/-, out of which, an amount of Rs. 15,000/- was due even before the revocation letter was given by the surety, Lakshmi Prasad and the remaining amount after the issuance of the revocation letter. The whole sale dealer filed a suit against Bhavani Prasad and also against Lakshmi Prasad for the entire amount. Whether the surety, Lakshmi Prasad is liable for any amount?

Under Section 129 of the Indian Contract Act, 1872, a guarantee which extends to a series of transactions, is called a 'Continuing guarantee' and under Section 130, a continuing guarantee may at any time be revoked by the surety as to future transactions by notice to the creditor.

As Lakshmi Prasad has revoked the guarantee given by him on behalf of Bhavani Prasad, he is not liable for any amount, for the value of which cloth was supplied by the wholesale dealer to Bhavani Prasad subsequent to the date of receipt of revocation letter, sent by Lakshmi Prasad. He is, however, liable for the amount for the value of which cloth was supplied to Bhavani Prasad upto the date of revocation.

As it is proved that cloth worth Rs. 10,000/- was supplied by the whole-sale dealer to Bhavani Prasad even after receipt of the revocation letter, sent by Lakshmi Prasad, Lakshmi Prasad is not liable for this amount of Rs. 10,000/-. However, as an amount of Rs. 15,000/- is outstanding by the date of receipt of revocation letter, Lakshmi Prasad is jointly and severally liable along with the principal debtor, Bhavani Prasad for the said amount of Rs. 15,000/- only.

205. Anuradha Pharmaceuticals deal in wholesale medicines. Kartik, aged 20 years, who has passed Diploma in Pharmacy approaches the said company for appointment. The company has agreed to appoint him as their collection agent provided, the boy gives surety of any respectable person who they know. Thereupon, the boy approaches Durga Prasad, a respectable person of the locality and requests him to give surety for him to Anuradha Pharmaceuticals. Thereupon, Durga Prasad gives surety to the said company for the appointment of the boy, Kartik as a Collection Agent only. The boy works as a collection agent for

three years and earns good name in the company. Thereupon, the company has entrusted upon him, sale of medicines in neighbouring towns to the retail dealers. The company has been entrusting medicines in large quantities, worth about Rs. 20,000/- to Rs. 25,000/- every week for selling the same to the retail dealers and the boy accordingly continues to sell the medicines. One day Kartik, after selling medicines worth about Rs. 20,000/-, does not remit the sale proceeds to the company and misappropriates the same. Thereupon, the company has called upon the surety, Durga Prasad, who gave guarantee for the boy to reimburse the amount payable by Kartik. Whether Durga Prasad is liable for the amount to the company?

- * Under Section 133 of the Indian Contract Act, 1872, any variance made without the surety's consent in the terms of the contract between the principal debtor and the creditor, discharges the surety as to transactions subsequent to the variance.

As Durga Prasad has given guarantee to the company for appointing the boy as a Collection Agent thereby giving an impression that his duty is to collect amounts from the retail customers and hand over the amounts so collected to the company and his guarantee does not extend to the entrustment of medicines for sale, and as the boy was entrusted with the medicines for sale to the retail dealers outside the city, contrary to the guarantee given by Durga Prasad, he is not liable for any amounts misappropriated by the boy out of the sale proceeds. So he is not liable for the suit claim.

206. Sashibhushana Rao was working as a Senior Assistant in the Collector's Office. He approached State Bank of India and requested them to grant a loan of Rs. 12,000/- for purchase of a colour T.V. The Bank insisted on producing three sureties for the grant of the loan. Thereupon, he requested his colleagues Srikanth, Typist, Goutam, Senior Assistant and Prahlada Rao, Junior Assistant to give surety for the loan to be sanctioned by the Bank. They agreed and gave guarantee for the loan and executed surety bonds. Thereupon, the loan was released to Sashibhushana Rao and he purchased the colour T.V. and produced the receipt to the Bank. He paid five instalments at the rate of Rs. 500/- and thereafter, he committed default in payment of the instalments. The Bank demanded Sashibhushana Rao to

pay the arrears but, he did not pay. The Bank waited upto two years by sending formal letters and making oral requests. As Sashibhushana Rao did not pay the amount inspite of letters, finally, the bank took legal action by sending a registered lawyer's notice and thereafter, filed a suit against the principal borrower and also, the sureties and obtained a decree. Even after passing of the decree, Sashibhushana Rao did not pay. Then, the Bank filed execution petition for a total amount of Rs.15,000/- against the principal borrower and the sureties for attachment of their respective salaries. While the execution petition was in the process of ordering notices, the Principal borrower, Sashibhushana Rao died. Thereupon, without impleading his legal representatives, the Bank proceeded against the sureties only. Ultimately, in the execution proceedings, the Bank collected an amount of Rs. 8,000/- from Goutam, Senior Assistant, Rs.3,500/- from the Typist, Srikanth and Rs. 3,500/- from the Junior Assistant, Prahalada Rao. Thus, the Senior Assistant, Goutam paid an amount of Rs. 3,000/- over and above his share. Whether he is entitled to claim contribution from the other sureties?

- * Under Section 146 of the Indian Contract Act, 1872, where two or more persons are co-sureties for the same debt or duty, either jointly or severally, and whether under the same or different contracts, and whether with or without the knowledge of each other, the co-sureties in the absence of any contract to the contrary, are liable, as between themselves, to pay each an equal share of the whole debt or of that part of it which remains unpaid by the principal debtor.

As Sashibhushana Rao died without paying the loan amount and as the bank filed execution petition against the sureties for a total sum of Rs. 15,000/- and as there is no contract between the sureties to share, the liability in a particular ratio, the sureties are liable to pay the entire amount in equal shares. As there are three sureties for the debt of Rs.15,000/- payable by the principal debtor, each surety would be bound to pay Rs. 5,000/-. As the Senior Assistant, Goutam, has paid Rs. 8,000/-, i.e., Rs. 3,000/- over and above his liability, he is entitled to recover from the other two sureties the excess amount paid by him, by way of contribution.

207. Sanjeeva Naidu has two jersy cows. One of the cows is pregnant. He proposes to go to Banaras and other places in the North on pilgrimage along with his entire family members. So he requests his family friend, Satyam Naidu to look after the two jersy cows. He also gives sufficient amount for purchasing cattle fodder for the cows, and he goes on pilgrimage. A fortnight after Sanjeeva Naidu left for pilgrimage, the pregnant jersy cow gives birth to a calf. After three months, Sanjeeva Naidu returns from the tour and asks for return of the cows entrusted by him, to his friend Satyam Naidu. Satyam Naidu simply returns the two cows and does not return the calf born to the pregnant cow. When Sanjeeva Naidu asks for return of the calf also, Satyam Naidu refuses to give the calf saying that he has given only two cows and he is returning the same to him. Whether Sanjeeva Naidu is entitled to get the calf?

- * Under Section 163 of the Indian Contract Act, 1872, in the absence of any contract to the contrary, the bailee is bound to deliver to the bailor or according to his directions, any increase or profit which may have accrued from the goods bailed.

As Sanjeeva Naidu has entrusted his pregnant cow to his friend, Satyam Naidu to take care of it and as that cow has given birth to a calf, Under Section 163 of the Indian Contract Act, Satyam Naidu is bound to return the calf also, along with the cow.

208. Satish Kumar went to Bangalore on his personal work. He took his suit case along with him. In that suit case, he kept Rs. 10,000/- and important documents, diary and also his visiting cards. He has to deposit the said amount in Karnataka Bank. While he was going in an auto in Bangalore, after getting down from the train, the suit case slipped down from the auto and he did not notice it. When he went to a hotel, he got down from the auto and found his suit case missing. Balakrishna, a resident of Bangalore saw the suitcase falling down from the auto and took the suitcase into his custody and tried to catch the auto, following it for some distance but he could not. Then he went to his house and opened the suit case and found cash of Rs. 10,000/- and important documents and diary and visiting cards. Satish Kumar gave a police complaint and returned to his place, Ananthapur and he made a publication in all the news papers circulated in

Bangalore announcing a reward of Rs. 2,000/- to the person who hands over the suit case to him. Balakrishna saw the advertisement and with the help of the address given in the paper, which tallied with the address given in the diary and visiting cards, went to Ananthapur and located the house of Satish Kumar and showed him the suit case. Satish Kumar became restless after missing his suit case containing cash and valuable documents. On seeing the suit case, he was very much pleased. Balakrishna asked for the reward announced by Satish Kumar. Whether Balakrishna has got any right to claim reward from Satish Kumar?

- * Under Section 168 of the Indian Contract Act, 1872, the finder of goods has no right to sue the owner for compensation for trouble and expense voluntarily incurred by him to preserve the goods and to find out the owner; but he may retain the goods against the owner until he receives such compensation; and where the owner has offered a specific reward for the return of goods lost, the finder may sue for such reward and may retain the goods until he receives it.

A finder of goods is not under any duty to take them into his custody. If he does so, however, he has to take care of them like a bailee. In preserving them and also in tracing out the owner, he may incur some expenses. The owner cannot recover the goods from him without satisfying his claim to such compensation. The possessory lien can be claimed also in respect of any specific reward offered by the owner for the return of the goods lost by him. The lien of the finder, therefore, extends to claim compensation and also claim for any reward.

As Balakrishna has come all the way from Bangalore to Ananthapur spending his own money, he is entitled to claim compensation. Further, as Satish Kumar has announced reward of Rs. 2,000/- Balakrishna is entitled to this amount as reward also. So, Balakrishna will have lien over the suit case till both the above claims are satisfied by Satish Kumar.

209. Pradeep pledged gold ornaments in Canara Bank and took a loan of Rs. 10,000/-. As he did not repay a single pie, the Bank gave registered notice to him fixing three months' time for redeeming the pledge by paying the principal and interest. The Bank specifically stated in the registered notice that if he did not pay the principal and interest within three months, the gold

ornaments pledged by Pradeep would be put to sale, after following the due procedure. Even after three months, Pradeep could not redeem the gold ornaments. Thereupon, the Bank made a paper publication fixing some date for the sale of the gold jewellery. A day before the date fixed for auction, Pradeep secured the amount and paid the same in the Bank and asked for return of the gold ornaments. The Bank still asked him to pay Rs. 500/- more which was incurred by the bank in giving registered notice and also making paper publication and taking steps for sale of the gold ornaments. Pradeep refused to pay that amount. The Bank refused to return the gold ornaments. Pradeep filed a suit claiming return of the gold ornaments pledged by him saying that he has paid the entire principal and interest. Whether he is entitled to claim return of the gold ornaments?

- * Under Section 177 of the Indian Contract Act, 1872, if a time is stipulated for payment of the debt or performance of the promise, for which the pledge is made and the pawnor makes default in payment of the debt or performance of the promise at the stipulated time, he may redeem the goods pledged at any subsequent time before the actual sale of them; but he must, in that case, pay, in addition, any expenses which have arisen from his default.

As the Bank has incurred expenses, amounting to Rs. 500/- in issuing registered notice to the pawnor, making paper publications and making arrangements for conducting sale, the Bank is entitled to claim that amount from the pawner in addition to the principal and interest payable by him.

210. Ramgopal & Co. is dealing in prawns business in Palasa. They transport prawns from Palasa to various places in India and also to foreign countries. They appointed Satish as their agent for transporting prawns to Orissa State. One day, they entrusted one lorry load of prawns to Satish for being transported to Cuttack. He accordingly, engaged a lorry and was going in that lorry to Cuttack. When he reached Ichapuram, the border of Andhra Pradesh and was about to enter into Orissa, he was told that there was a strike by lorry operators and lorries were not being allowed to enter into Orissa. The strike reached its peak and there was no hope of the strike being called off at least for a fortnight. If the prawns are kept in the containers for a fortnight they will spoil and eventually, there will be a heavy loss. So, the agent Satish sold the prawns at Ichapuram for some

reduced price and remitted the amount to the company. The Company has asked for full amount. Whether the Agent, Satish is liable to pay the entire amount in those circumstances?

- * Under Section 189 of the Indian Contract Act, 1872, an agent has authority in an emergency to do all such acts for the purposes of protecting his principal from loss as would be done by a person of ordinary prudence, in his own case, under similar circumstances.

As there is strike and as the lorries are not allowed to go to Orissa State and as there is no hope of the strike being called off for a fortnight and if the prawns are allowed to be kept in the containers for, fortnight, they will get completely spoiled. Under Sec. 189 of the Indian Contract Act, the agent, having sold the prawns for some lesser amount at Ichapuram, with a view to protect his principal's interest, the agent has authority to sell the prawns and he has acted honestly in the interest of the principal and he is not liable to pay the loss said to have been caused to the principal.

211. Giridhar, pretending himself to be an agent of Dhanalakshmi Rice Mills, collected an amount of Rs. 5,000/- from Seetha Rice Merchants, as advance, for supply of 100 bags of fine quality of rice within one month. But within that period, the rice bags were not supplied to Seetha Rice Merchants, as promised by the agent, Giridhar. After waiting for some reasonable time, Seetha Rice Merchants approached Dhanalakshmi Rice Mills and asked for the rice bags, agreed to be supplied by their agent, Giridhar. Then, Dhanalakshmi Rice Mills disowned the liability of the agent and said that Giridhar was not their agent and that they are not liable to supply the rice bags or refund the advance paid to Giridhar. What is the course open to Seetha Rice Merchants?

- * Under Section 235 of the Indian Contract Act, 1872, a person untruly representing himself to be the authorised agent of another and thereby inducing a third person to deal with him as such agent, is liable if the alleged employer does not ratify his acts, to make compensation to the other in respect of any loss or damage which he has incurred by so dealing. As Giridhar, untruly representing himself to be the authorised agent of Dhanalakshmi Rice Mills, induced Seetha Rice Merchants to part with a sum of Rs. 5,000/- as advance for

supply of 100 bags of rice and as the principal Dhanalakshmi Rice Mills do not ratify his acts, Giridhar is liable to make compensation to Seetha Rice Merchants in respect of loss or damage which they have incurred by such dealing.

16

THE INDIAN DIVORCE ACT, 1869

(Act No.4 of 1869)

- 212. *Restitution of Conjugal rights*
- 213. *Decree for a declaration of marriage on the ground of husband's impotency*
- 214. *Rights of children of annulled marriage*
- 215. *Rights of wife with regard to her property after passing of a decree for judicial separation*
- 216. *Deserted wife may apply to court for protection*
- 217. *Damages by husband from adulterer*
- 218. *Alimony pending suit filed under the Indian Divorce Act*
- 219. *Settlement of wife's property for benefit of husband and children after passing a decree of dissolution of marriage or judicial separation*

212. Anitha married Suresh as per their caste custom and Hindu rites. They have two sons. Their births were duly registered in the office of the Registrar of Births and Deaths by the husband. Subsequently, differences arose between the couple as Suresh did not like his wife moving closely with her colleagues. She was even put to cruelty. The husband indirectly imputed unchastity to her by saying that the two children were not born to him. Unable to bear with him, Anitha went to her parents' house and did not return to her husband. After some time, Suresh asked her to come back to him and join him, but she refused. Thereupon, he filed a petition under Section 32 of the Indian Divorce Act, for restitution of conjugal rights. The wife resisted the petition, putting forth the cruelty meted out to her by her husband and also filed birth register extracts of her sons, in support of her contention that the allegations levelled against her during her

stay with her husband were baseless. What would be the effect of the petition filed by the husband?

- * The allegations made by husband against his wife that children were not born to him indirectly imputes unchastity to her. In view of the birth register extracts relating to his sons, and the evidence of the wife, the presumption under Section 112 of the Evidence Act has to be drawn against the husband that the children are the legitimate children of both the husband and wife and because the allegation made by the husband amounts to causing mental cruelty to wife and also apprehension of danger to her life and to the life of her children, the wife is perfectly justified in staying away from her husband and depriving him from claiming a right for restitution of conjugal rights.

213. Urmila Kumari married Soloman. They are Christians. The marriage between wife and husband was not consummated due to the incapacity of the husband. The husband was found to be both mentally and physically insane and he was not in a position to have intercourse and even the slightest attempt that was done was proved to be imperfect or partial. Consummation of the marriage can be held to have taken place only when there is ordinary and complete sexual intercourse between the parties but not when the intercourse is imperfect or partial. Whether the wife is entitled to a decree of nullity of marriage?

- * The wife, Urmila Kumari can present a petition to the District Court for a declaration that her marriage with Soloman is null and void on the ground that her husband was impotent at the time of the marriage and at the time of the institution of suit as required under Section 19 (1) of the Act. When such a petition is filed, it is for the husband to rebut the allegation that he is incapable of sexual intercourse. If he fails to rebut the said allegation, the wife is entitled to a decree of declaration of nullity of the marriage.

214. Francis married Leela and they had a son and a daughter. They are Christians. Francis went on pilgrimage and at one place, while he was taking bath in a river, flash floods came and he got washed away. The persons who went along with him returned and informed his wife about the same. She waited for about two years but he did not return and she believed that her husband died. Then she contracted a second marriage with

another Christian. Samuel. One year thereafter, her first husband returned and enquired about his wife. Persons in the locality informed him that she remarried another person and went along with him. Then he went to the place where she was living and requested her to come along with him. She refused to come. Then he filed a petition for annulment of the marriage and the marriage was annulled on the ground that the subsequent marriage was contracted by the wife in good faith and with the full belief that her former husband was dead. What is the position of the children who were born through the first husband of Leela?

- * Under Section 21 of the Indian Divorce Act, the children begotten before the decree of annulment shall be entitled to succeed, in the same manner as legitimate children, to the estate of the parent who, at the time of the marriage, was competent to contract.

215. John Fedreck married Mounika. They are Christians. After some time, the husband started illtreating his wife and imputing unchastity to her. She could not obtain a decree for dissolution of the marriage on the ground of cruelty. So, she filed a petition for judicial separation on the ground of adultery and ultimately judicial separation was granted. She acquired some properties. The husband contracted several debts and entered into some agreements with third parties. What is the position of the lady Mounika and what is the effect of her properties?

- * Under Section 24 of the Indian Divorce Act, after the passing of a decree for judicial separation, the wife shall, from the date of the sentence and while the separation continues, be considered as unmarried with respect to property of every description which she may acquire or which may come to or devolve upon her. She can also dispose of such property by her in all respects as an unmarried woman and on her death the same shall, in case she dies intestate, go as the same would have gone if her husband had been then dead, provided that, if any such wife again cohabits with her husband, all such property as she may be entitled to when such co-habitation takes place shall be held to be for her separate use, subject, however, to any agreement in writing made between herself and her husband whilst separate.

In every case of judicial separation, the wife shall be considered as an unmarried woman for any contracts and wrongs and

injuries and suing and being sued in any civil proceeding and her husband shall not be liable for any contract incurred by her, during the separation.

216. Ramkumar and Sunandana are husband and wife and they lived happily for some time. After that, differences arose between them and the husband had practically deserted his wife but no decree for divorce or judicial separation was obtained from the competent civil court. The wife had properties. Her husband contracted several debts. She felt that her husband may do harm to her and also to her property. Some suits for recovery of amounts were also pending against her husband. She wanted to protect her property from the hands of her husband and his creditors. What can she do under such circumstances?

- * Under Section 27 of the Indian Divorce Act, any wife to whom Section 4 of the Indian Succession Act does not apply may, when deserted by her husband, present a petition to the District Court or High Court at any time after such desertion, for an order to protect any property which she may have acquired or may acquire and under Section 28 of the said Act, the court, if satisfied of the allegations made by the wife, may make an order protecting her earnings and other property from her husband and all his creditors.

217. John Palson married Visalakshi. Both belonged to Christian community. Visalakshi has got some properties from her parents. Before marriage, she used to move freely in the society and used to go to clubs, etc. After marriage also, she continued to live in the same way. She developed illicit intimacy with one David who is working as a Public Relations Officer in Social Welfare Department. Palson came to know that David committed adultery with his wife. What is the remedy available to Palson against David?

- * Under Section 34 of the Indian Divorce Act, any husband, who believes that any person has committed adultery with his wife, may file a petition before the District Court claiming damages from that person. However, if the adulterer proves that the wife of Palson was, at the time of the adultery, living apart from her husband and leading the life of a prostitute or if the adulterer believes that she is not a married woman, he cannot be directed to pay damages.

218. Anitha marries Suresh as per their caste custom and Hindu rites. They have a son. Anitha is working as a teacher in Government High School. Suresh is working as Field Officer in State Bank of India and drawing a monthly salary of Rs. 5,000/-. Differences arise between the couple. The husband does not like his wife to move closely with her colleagues and forces her to resign and accordingly, she resigns. Still, he illtreats his wife. Unable to bear the illtreatment meted out to her, the wife leaves the house of her husband and goes to her parents house along with her son. After sometime, Suresh goes to her and asks her to come along with him, but she refers to go. Suresh files a petition for restitution of conjugal rights under Section 32 of the Indian Divorce Act. As the wife is staying separately along with her son, Is she entitled to any maintenance?

- * Under Section 36 of the Indian Divorce Act, in any suit instituted by the husband for restitution of conjugal rights, the wife is entitled to alimony pending the suit, and the court, on being satisfied of the truth of the statements made by the parties, may make such order on the husband for payment to the wife of alimony not exceeding 1/5th of the husband's average net income for 3 years and under Section 37 of the said Act, the Court may order that the husband shall secure to the wife such gross sum of money or such annual sum of money for any term not exceeding her own life.

219. David Palson and Janaki Mary, who belong to Christian Community are husband and wife and they have a daughter and a son. Mary has got vast properties of her own. She lives in adultery. The husband files a petition for dissolution of marriage. As the husband has no properties of his own, he requests the court to settle some properties of his wife on him for the maintenance of the children. Is he entitled to claim the properties of his wife?

- * Under Section 39 of the Indian Divorce Act, whenever the court pronounces a decree of dissolution of marriage or judicial separation for adultery of the wife, if it is made to appear to the court that the wife is entitled to any property, the court may order such settlement as it thinks reasonable to be made of such property or any part thereof for the benefit of the husband or of the children.



17

THE INDIAN EVIDENCE ACT, 1872

(Act No.1 of 1872)

220. *Boundaries prevail over the extent*

221. *Birth during marriage, conclusive proof of legitimacy of the child*

222. *Presumption of fact of suicide on account of abetment*

223. *Presumption of fact on account of possession of stolen goods*

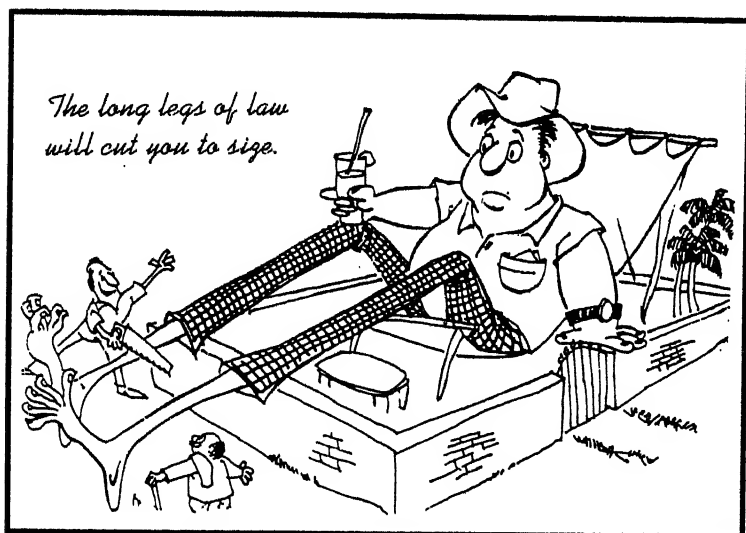
224. *Presumption of common course of business being followed*

225. *Estoppel*

226. *Estoppel of tenant*

220. Kailasa Rao has 900 square yards of site in Balanagar area. He sells the said property in favour of Balaraj for Rs. 1.5 lakhs. In the sale deed, clear boundaries are mentioned. Balaraj

wants to construct flats on the said land and so, he makes preparations and firstly wants to construct boundary for the entire site and he puts the lines for boundary. The eastern neighbour objects for the boundary saying that he is encroaching upon his site. Then a dispute arises as to what is the actual extent of the land purchased by Balaraj from Kailasa Rao. Then, they get the land measured and on actual measurement, the land comes to 850 square yards. But Kailasa Rao, the vendor and Balaraj, the vendee both claim 900 square yards as belonging to them. What is the position?



- * Boundaries prevail over the extent. A person cannot sell the land which is beyond the boundaries. When there is ambiguity with regard to the extent, evidence as to boundaries can be let in under Section 95 of the Evidence Act. Whatever may be the extent that is mentioned in the sale deed, the extent which is within the boundaries alone can be conveyed under the sale deed and the extent beyond the boundaries cannot be conveyed and so, Balaraj is entitled to only 850 square yards covered within the specific boundaries mentioned in the sale deed and he cannot encroach upon the neighbour's land, to the extent of the remaining 50 sq.yards.

221. Kiran Jain married Divya Vani and they were residing at Bombay. Some time after the marriage, differences arose between

them which led to the extent of obtaining a decree for divorce. The wife remained unmarried after the divorce. However, she gave birth to a female child within 280 days of the date of the dissolution. She issued a notice claiming maintenance for herself and also for the girl born to her. She stated and asserted that she did not remarry after the divorce and that the girl was born to her, through her husband only. Kiran Jain gave a reply that he had no access to his wife and he had no intercourse with her for the last six months prior to the date of dissolution and in fact, he stated, he was not residing at Bombay and he was residing at Delhi by virtue of his employment and that he never visited Bombay and met his wife for the last six months prior to the dissolution. In those circumstances, can the daughter be treated as the legitimate daughter of Kiran Jain?



The general presumption under Section 112 of the Evidence Act is that, the fact that any person was born during the continuance of a valid marriage between his mother and any man or within two hundred and eighty days after its dissolution, the mother remaining unmarried shall be conclusive proof that he/she is the legitimate child of that man unless it can be shown that the parties to the marriage had no access to each other at any time when it could have been begotten.

In the above case, Kiran Jain has proved by adducing evidence that he had no access to his wife, Divya Vani for the last six

months, prior to the dissolution. Therefore, the so called daughter of Divya Vani cannot be considered to be the legitimate daughter of Kiran Jain.

222. Shivakumar married Deeparani as per caste custom and Hindu law. At the time of their marriage, the bridegroom's father gave Rs. 25,000/- as dowry to Shivakumar. After marriage, Shivakumar continued to live in the same house wherein his mother and widowed sister were also staying. After the marriage the mother and sister of Shivakumar used to torture Deeparani on the ground that usual presents to be given to bridegroom's sister (Adapaduchu Katnalu) were not properly given. After some more time, Shivakumar was forced by his mother and widowed sister to ask his wife to get some more dowry from her father as the dowry of Rs. 25,000/- was not sufficient. All the three used to create mental agony to Deeparani. They did not allow her to sleep in peace. They used to subject her to severe cruelty. Unable to bear the cruelty at the hands of her husband, mother-in-law and sister-in-law, Deeparani one day returned to her parents' house. Thereafter, a lot of correspondence exchanged between Shivakumar and Deeparani. Elders also entered the scene and ultimately, Deeparani was forced to go back to her husband's house. One month after her return to her husband's house, again the mother and sister of Shivakumar and he himself



started illtreating her. One day, the paternal uncle's son of Deeparani came from her father's village and met Deeparani, which her mother-in-law and sister-in-law saw and weaved out some stories and complained to Shivakumar that his wife had illicit connections with one boy. Thereupon, Shivakumar also suspected her fidelity and beat her severely, in the presence of his mother and sister. Unable to bear the situation and being insulted, Deeparani committed suicide by pouring kerosene and setting fire to herself. Thus, she died within three years of her marriage. What is the position?

- * Under Section 113-A of the Evidence Act, when a woman committed suicide within a period of seven years from the date of her marriage because her husband and other relatives of her husband had subjected her to cruelty, the court may presume that such suicide had been abetted by her husband and other relatives of her husband.

223. Ramayya is a landlord. He has 100 acres of both wet and dry lands. As there is no water source for his dry lands, he purchases one motor pump set of 3 HP and gets it installed in his dry lands. He purchases it under a valid receipt from an authorised dealer. All the particulars of the motor pump set including engine number are given in the cash bill. On one night the said water pump set is stolen by some unknown persons. He gives a complaint to the police giving all the details of the water pump set, enclosing a copy of the bill. Three months later, he comes to know that his motor pump set is in the land of Kamayya in the neighbouring village. The Sub-Inspector of Police accompanied by the complainant, Ramayya, goes to the neighbouring village and finds the motor pump set in the land of Kamayya. On seeing it, the Sub-Inspector interrogates Kamayya as to how he has come into possession of that motor pump set. Kamayya says that he purchased it from a broker but he could not give the name of that broker nor could he furnish any receipt or bill in token of the purchase of the said water pump set. He does not explain properly as to how he came into possession of that water pump set. What is the position?

Under Illustration (a) to Section 114 of the Evidence Act, the court may presume that a man, who is in possession of stolen goods soon after the theft, is either the thief or has received the goods knowing them to be stolen unless he can account for his possession. In the above case, Kamayya could not explain

properly as to how he came into possession of that water pump set. It is proved with reference to the cash bill produced by the complainant that it is the water pump set of the complainant, Ramayya. So, it can be concluded that Kamayya is a receiver of stolen property and so he is liable for punishment under Section 411 I.P.C.

224. Somasundaram borrowed Rs. 5,000/- from Gururaja Rao for some domestic purpose. Though about two and half years elapsed, Somasundaram did not repay the amount. Then, Gururaja Rao issued a registered notice to Somasundaram calling upon him to repay the amount due to him. There were no communal disturbances or postal strike or railway strike at that time. Subsequently, suit was filed against Somasundaram. In that suit, Gururaja Rao alleged that he issued a registered notice to Somasundaram before the filing of the suit. Somasundaram denied of having received any such letter. What is the presumption?

- * Under illustration (f) to Section 114 of the Evidence Act, the court may presume that the common course of business has been followed. So, the general presumption is that the registered letter sent by Gururaja Rao to Somasundaram, which contains correct address and proved to have been posted and not returned from the Dead Letter Office, must be presumed to have reached its destination.

225. Bhudevamma and Santhamma are sisters and both are widows. Bhudevamma has one son Murari and Santhamma has no children. All of them live in one house and Murari is aged about 25 years and he is managing the properties of both the sisters. Though the properties stood in the name of both the sisters, every one in that village believes that he is the owner of those properties. He offers to sell Ac. 2-00 of wet land belonging to Santhamma to one Jagannadha Rao. Murari makes Jagannadha Rao believe that he is the owner and induces him to purchase the said land, for a sum of Rs. 10,000/- One year after the sale, around the said land, colonies developed and the cost of the site was increased to a great extent. In the meantime Santhamma, the original owner of that Ac. 2-00 of land also dies, bequeathing the said property in favour of Murari under a registered will. Noticing the increase of the prices, Murari conceives a plan to get back the property already sold and he files a suit in the civil court to set

aside the sale transaction in favour of Jagannadha Rao on the ground that he has no valid title at the time of said sale. What is the position?

- * Murari is estopped by his conduct as by his declaration he made others believe that he is the owner of the property. Everyone in the village believed that he is the owner. It is not necessary that there should be a design to mislead at the time of the sale or fraudulent intention and under Section 115 of the Evidence Act, the representation even when made innocently or mistakenly may operate as an estoppel. As Murari has ultimately become the owner of the said land, he cannot be allowed to prove want of title at the time of sale, as he is estopped from doing so in view of his conduct.

226. Ramanamma has got Ac. 10-00 of land. A portion of that land abuts main road. Her servantmaid's son requested Ramanamma to permit him to erect a pan shop bunk in a corner of that land, which was abutting the main road. As he was no other than the son of her servant maid, she allowed the boy to erect a panshop and he used to pay some nominal rent every month for some time. Ramanamma had no male assistance. Taking advantage of that situation, the boy started evading payment of rent for the site. Ramanamma also did not seriously ask for rents as he was the son of her maid servant. After some time, that boy claimed title to the said site. What is the position?

- * Where a man, having no title, obtained possession of certain property, as a tenant, is estopped from denying his landlord's title under section 116 of the Evidence Act. A tenant, during his possession of premises, shall not deny that the landlord, under whom he had entered or from whom he has taken the property and to whom he has paid rent, had title at the time of his admission.

THE INDIAN PARTNERSHIP ACT, 1932
(Act No.9 of 1932)

227. Personal profits earned by partners

228. Minor's liability for decree debt

229. Mode of settlement of accounts between partners

230. Sale of goodwill after dissolution of partnership firm

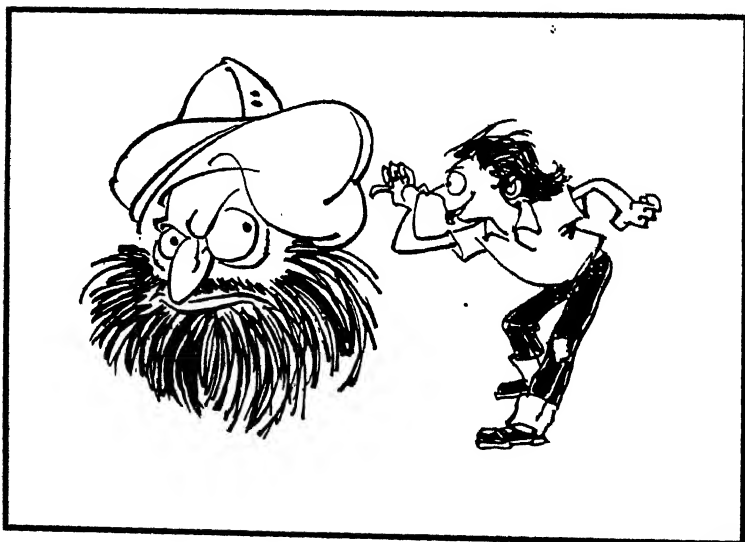
227. Chidambaram, Viswanatham and Venkata Krishtnayya have entered into a partnership business in whole sale ready made garments. Chidambaram has entered into a contract with M/s. Agarwal Readymade Garments, Bombay on behalf of the partnership to be their sole agents to deal exclusively in the garments manufactured by M/s. Agarwal Readymade Garments. It is agreed between Chidambaram and M/s. Agarwal Readymade Garments that besides the discount allowed to the partnership firm, M/s. Agarwal Readymade Garments should allow a commission of 2% on the sales, to Chidambaram. Chidambaram lays exclusive claim to that special commission of 2%. But the other partners insist that the special commission at the rate of 2% allowed to Chidambaram should form part of the profits earned by the partnership firm. What is the position?

Under Section 16 of the Indian Partnership Act, 1932, subject to contract between the parties, (a) if a partner derives any profit for himself from any transaction of the firm, or from the use of the property or business connection of the firm name he shall account for the profit and pay it to the firm and (b) if a partner carries on any business of the same nature and competing with that of the firm, he shall account for and pay to the firm all profits made by him in that business.

Thus, under clause (a) of Section 16 of the Indian Partnership Act, 1932, one of the duties of a partner is to account for any private profits made by him taking advantage of his fiduciary position. In the above case, the commission of 2% is a profit made from a transaction of the firm. So, he has to account for it to the firm and he cannot lay any exclusive claim to it.

228. Bhushan, Pradeep and Madhavi entered into a partnership agreement and they wanted to deal in T.Vs., Fridges and other electronic appliances, under the name and style "Madhavi Electronics". They had also taken Satyamurty, who was a minor boy, aged about 15 years into the partnership business. They contributed at the rate of Rs. 1 lakh each towards their respective capital. The firm earned good profits for the first two years. Later, the firm started to sell T.Vs., fridges, etc., on instalment basis. Thereafter, the firm incurred losses. The firm had to pay huge amounts to the whole sale dealers. They filed a suit against the partners of the firm and obtained a decree against them. In execution of the decree so obtained by the wholesale dealer, they wanted to proceed against the partners. Is the minor partner liable for the E.P. amount personally?

- * Under Sub-section (1) of Section 30 of the Indian Partnership Act, 1932, a person who is a minor may not be a partner of the firm, but, with consent of all the partners for the time being he may be admitted to the benefits of partnership. Under sub-section (5), at any time within six months of his attaining majority, or of his obtaining knowledge that he had been admitted to the benefits of partnership whichever date is later, such person may give public notice that he has elected to become or that he has elected not to become a partner in the firm and such notice shall determine his position as regards



the firm. If he fails to give such notice he shall become a partner in the firm on the expiry of the said six months.

Under sub-section (3) of the Section 30, minor's share is liable for the acts of the firm but the minor is not personally liable for any such act. So, in the above case, though the minor's share in the firm is liable for the decree amount he is not personally liable for the said decree.

229. Rama, Krishna and Govind entered into a partnership to do business in cinema theatre under the name and style 'Krishna Theatre'. After running the said business for ten years, they wanted to dissolve the partnership firm and settle the accounts. What is the procedure for settlement of the accounts between the partners?

- * Under Section 48 of the Indian Partnership Act, 1932, in settling the accounts of a firm after dissolution, the following rules shall be observed; viz., (a) losses, including deficiencies of capital, shall be paid first out of profits, next out of capital and lastly, if necessary by the partners individually in the proportions in which they were entitled to share profits: (b) the assets of the firm, including any sums contributed by the partners to make up deficiencies of capital shall be applied in the following manner and order (i) in paying the debts of the firm to third parties, (ii) in paying to each partner rateably what is due to him from the firm for advances as distinguished from capital, (iii) in paying to each partner rateably what is due to him on account of capital; and (iv) the residue, if any, shall be divided among the partners in the proportions in which they were entitled to share profits.

230. Mohd. Saffiuddin, Raghuveer and Purushottam are close friends. They are also well-to-do persons. They wanted to start a partnership business. They invest a capital of Rs. 1 lakh each and start the business. The business flourishes and earns good profits and also goodwill, for about ten years. Afterwards, differences arise between the partners and they dissolve the partnership firm. While dissolving the partnership firm, what is the way of treating goodwill earned by the firm?

- * Section 55 of the Indian Partnership Act, 1932, deals with the goodwill earned by the firm after dissolution. Under sub-section (1) in settling the accounts of a firm after dissolution,

the goodwill shall, subject to contract between the partners, be included in the assets and it may be sold either separately or along with other property of the firm. Sub-section (2) deals with the rights of buyer and seller of goodwill. Where the goodwill of a firm is sold after dissolution, partner may carry on a business competing with that of the buyer and he may advertise such business but, subject to agreement between him and the buyer, he may not (a) use the firm name, (b) represent himself as carrying on the business of the firm or (c) solicit the custom of the persons who were dealing with the firm before its dissolution. Under sub-section (3) any partner may, upon the sale of goodwill of a firm, make an agreement with the buyer that such partner will not carry on any business similar to that of the firm within a specified period or within specified local limits, and notwithstanding anything contained in Section 27 of the Indian Contract Act, 1872, such agreement shall be valid if the restrictions imposed are reasonable.

THE INDIAN PENAL CODE, 1860

(Act No. XLV of 1860)

- 231. *Acts done by several persons in furtherance of common intention*
- 232. *Co-operation by doing one of several acts constituting an offence*
- 233. *Limit of imprisonment for non-payment of fine when imprisonment and fine awardable*
- 234. *Termination of imprisonment on payment of proportionate part of fine*
- 235. *Death of offender not to discharge property from liability*
- 236. *Limit of punishment of offence made up of several offences*
- 237 & 238. *Act done by a person by mistake of fact*
- 239. *Act done by a person justified or by mistake of fact believing himself justified by law*
- 240. *Act likely to cause harm but done without criminal intent and to prevent other harm*

241. *Act of a child under seven years of age*
242. *Act of a child above seven and under twelve of immature understanding*
243. *Act of a person of unsound mind*
244. *Act of a person incapable of judgment by reason of intoxication caused against his will*
245. *Act not intended to cause death, done by consent in good faith for person's benefit*
- 246 & 247. *Act done in good faith for benefit of a person without consent*
248. *Communication made in good faith*
249. *Act done in right of private defence*
250. *Right of private defence of the body and of property*
251. *Acts against which there is no right of private defence*
252. *When the right of private defence of the body extends to causing death*
253. *Commencement and continuance of the right of private defence of the body*
254. *When the right of private defence of property extends to causing death*
255. *Right of private defence against deadly assault when there is risk of harm to innocent person*
- 256 & 257. *Abetment*
258. *Liability of abettor when one act abetted and different act done*
259. *Liability of abettor for an effect caused by the act abetted different from that intended by the abettor*
260. *Abettor present when offence is committed*
261. *Abetment of offence punishable with imprisonment if offence be not committed*
262. *Public servant concealing design to commit offence which it is his duty to prevent*
263. *Criminal conspiracy*
264. *Unlawful assembly*
- 265 & 266. *Public servant taking gratification other than legal remuneration in respect of an official act*
267. *Taking gratification, by corrupt or illegal means. in order*

to influence public servant

268. *Public servant obtaining valuable thing, without consideration, from person concerned in proceeding or business transacted by such public servant*
269. *Bribery*
270. *Non-attendance in obedience to an order from public servant*
271. *Omission to produce document to public servant by person legally bound to produce it*
272. *Omission to give notice or information to public servant by person legally bound to give it*
273. *Refusing to answer public servant authorised to question*
274. *False information with intent to cause public servant to use his lawful power to the injury of another person*
275. *Illegal purchase or bid for property offered for sale by authority of public servant*
276. *Giving false evidence*
277. *Fabricating false evidence*
278. *Issuing or signing false certificate and using it as true knowing it to be false*
279. *False statement made in declaration which is by law receivable as evidence*
280. *Causing disappearance of evidence of offence or giving false information to screen offender*
281. *Intentional omission to give information of offence by person bound to inform*
282. *Destruction of document to prevent its production as evidence*
283. *False personation for purpose of act or proceeding in suit or prosecution*
284. *Resistance or obstruction by a person to his lawful apprehension*
285. *Intentional insult or interruption to public servant sitting in judicial proceeding*
286. *Counterfeiting Indian coin*
287. *Sale of counterfeit Government stamp*
288. *Being in possession of false weight or measure*

289. *Negligent act likely to spread infection of disease dangerous to life*
- 290 & 291. *Rash driving or riding on a public way*
292. *Negligent conduct with respect to pulling down or repairing buildings*
293. *Sale, etc., of obscene books, etc.*
294. *Obscene acts and songs*
295. *Injuring or defiling place of worship with intent to insult the religion of any class*
296. *Culpable homicide by causing death of person other than person whose death was intended*
- 297 & 298. *Culpable homicide not amounting to murder*
- 299 & 300. *Causing death by negligence*
301. *Dowry death*
302. *Abetment of suicide*
303. *Attempt to commit suicide*
304. *Concealment of birth by secret disposal of dead body*
305. *Voluntarily causing hurt*
306. *Causing hurt by means of poison, etc., with intent to commit an offence*
307. *Causing grievous hurt by act endangering life or personal safety of others*
308. *Wrongful restraint*
309. *Assault or criminal force to woman with intent to outrage her modesty*
310. *Kidnapping from lawful guardianship*
311. *Kidnapping or maiming a minor for purposes of begging*
312. *Kidnapping, abducting or inducing woman to compel her marriage, etc.*
313. *Procurator of minor*
314. *Importation of girl from foreign country*
315. *Kidnapping or abducting child under ten years with intent to steal from its person*
316. *Buying or disposing of any person as a slave*
317. *Selling minor for purposes of prostitution, etc.*
318. *Rape - Effect of woman committing rape on a man*

319. *Rape committed by a man after obtaining the consent of woman by putting her in fear of death*
320. *Rape committed by a man on a woman*
- 321& 322. *Rape committed by a man on a girl under sixteen years of age*
323. *Rape committed by a doctor being on the management of the staff of a hospital taking advantage of his official position*
324. *Theft in a dwelling house*
325. *Extortion*
326. *Dacoity with attempt to cause death or grievous hurt*
327. *Dishonest misappropriation of property*
- 328 & 329. *Dishonest misappropriation of property possessed by deceased person at the time of his death*
330. *Criminal breach of trust*
331. *Criminal breach of trust by carrier, etc.*
- 332, 333 & 334. *Criminal breach of trust by public servant, or by banker, merchant or agent*
335. *Dishonestly receiving property stolen in the commission of a dacoity*
336. *Cheating and dishonestly inducing delivery of property*
337. *Cheating by personation*
338. *Mischief*
339. *Mischief by injury to works of irrigation or by wrongfully diverting water*
340. *Mischief by fire with intent to destroy houses*
341. *Lurking house trespass by night in order to commit offence punishable with imprisonment*
342. *Forgery*
343. *Using as genuine a forged document*
344. *Forgery of acknowledgment for certain amount*
345. *Fraudulent destruction of will*
346. *Falsification of accounts*
347. *Counterfeiting currency - notes; using as genuine, forged or counterfeit currency - notes; possession of counterfeit currency - notes and possessing instruments or material for counterfeiting currency - notes*

348. *Cohabitation caused by a man deceitfully inducing a belief of lawful marriage*
349. *Breach of contract to attend on and supply wants of helpless person*
350. *Marrying again during life time of husband and abetment of such marriage*
351. *Second marriage during the life time of a former husband whose whereabouts are not known for seven years and more*
352. *Word, gesture or act intended to insult the modesty of a woman*
353. *Misconduct by a drunken person in a public place*

231. There was an almond garden in the outskirts of Razole. Since there was a very good crop, the almond fruits were plucked and spread in the garden for being filled in gunny bags the next day. That night, a watchman was appointed for guarding the almond fruits. Chandrayya, Prabhu and Polayya were noted for committing thefts of crops and fruits in the gardens and they planned to steal almond fruits from the said garden. Accordingly they took one jeep and went to the garden. Prabhu was standing near the jeep. Which was kept at the entrance of the garden watch that if anyone was coming or noticing them. The remaining two persons, Chandrayya and Polayya entered the garden, caught hold of the watchman, tied him to a pole, gagged and filled up the almond fruits into gunny bags and took away the same. On the next morning, the owner of the garden came to the garden and having found that the plucked almond fruits were stolen, he gave a complaint in the police station. During the investigation, the police arrested those three persons while they were selling the fruits and after completing investigation, they filled a charge sheet against the three persons. In the court, Prabhu contended that he simply stood at the entrance of the garden near the jeep and he did not actually commit the theft. Whether he is liable for any offence?

Under Section 34, I.P.C., when a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone. It must be established that there was common intention in the sense of a pre-arranged plan between the three and the pre-arranged plan

It's true you did not commit theft or drive the vehicle. But you are there with me and your life behind the bars is assured.



must precede the act constituting the offence. Where the accused go with a common purpose to execute a common object, each and everyone becomes responsible for the acts of each and every other in execution and furtherance or their common purpose and all are guilty of the principal offence. He need not be present in the garden. He can stand guard by a gate outside the garden to warn his companions about any approach of danger or wait in a car on a nearby road to facilitate their escape. So, as Prabhu, Polayya and Chandrayya went with a common purpose with a pre-arranged plan to commit the theft of almond fruits and in pursuance of their pre-arranged plan and common intention Prabhu was at the gate of the garden ready to warn his companions about any approach of danger, he is also liable along with the other two persons for the offence under Section 379 r/w Section 34, I.P.C.

232. Rajeswara Rao has vast properties. He has one son, Arjun and also has a brother, Malleswara Rao. After partition between the brothers, Rajeswara Rao developed his properties whereas, Malleswara Rao ruined his share. Malleswara Rao has an eye on the properties of Rajeswara Rao. For some time Rajeswara Rao is not keeping well. Malleswara Rao takes advantage of his illness. He approaches his brother and tells him that he will take him to the doctor whom he knows well and who is an expert. Rajeswara Rao agrees to go to the doctor along with his brother

on the next day. Apparently Malleswara Rao goes to a doctor and bribes him and tells him that he will bring his brother the next day for treatment and that the doctor should give wrong diagnosis of the disease and wrong treatment which must lead to his death in due course of time and if the doctor does so, Malleswara Rao would give some more money. As per the said agreement, the doctor gives wrong treatment and consequently, after a fortnight Rajeswara Rao dies. After the death of Rajeswara Rao, his son Arjun had some doubt about the treatment given by the doctor and so gives a complaint to the police against the doctor. During investigation, it was revealed that the doctor co-operated with the brother of the deceased in achieving his object of doing away with the deceased. Is the doctor liable for any offence?

- * Under Section 37, I.P.C., when an offence is committed by means of several acts, whoever intentionally co-operates in the commission of that offence by doing any one of those acts, either singly or jointly with any other with any other person, commits that offence. So, in this case, as the doctor co-operated with Malleswara Rao in killing his brother, Rajeswara Rao by giving wrong treatment, the doctor is also liable for the same offence which Malleswara Rao has committed.

233. On account of political rivalry between the ex-sarpanch group and the sitting-sarpanch group, the two groups attacked each other in which Parthasaradhi stabbed Rajanna with a knife and caused a grievous injury and Narasayya hit Rajanna with a spear and caused a simple injury. On the report given by Rajanna, police investigated into the matter and filed the charge sheet. After trial, the Judicial Magistrate of the First Class, having come to the conclusion that guilt of the accused was established beyond reasonable doubt, convicted Parthasaradhi for the offence under Section 326, I.P.C. and sentenced him to undergo R.I. for a period of 3 years and to pay a fine of Rs. 2,000/- in default, to undergo simple imprisonment for a period of two years. He also convicted Narasayya for the offence under Section 325, I.P.C. and sentenced him to undergo R.I. for a period of six months and to pay a fine of Rs. 1,000/- in default to suffer S.I. for two years. Is the default sentence imposed by the Magistrate correct?

- * Under Section 65, I.P.C., the term for which the court directs the offender to be imprisoned in default of payment of a fine

shall not exceed one-fourth of the term of imprisonment which is the maximum fixed for the offence if the offence be punishable with imprisonment as well as fine. This section applies to all cases where the offence is punishable with imprisonment as well as fine i.e., cases where fine and imprisonment can be awarded and also those where the punishment may be either fine or imprisonment but not both. So, in the case of default, sentence imposed for the offence under Section 326, I.P.C. against Parthasaradhi is concerned, as the maximum sentence of imprisonment prescribed for the offence under Section 326, I.P.C. is imprisonment for 10 years and as the default sentence imposed by the Magistrate is two years, which is less than one-fourth of the maximum sentence prescribed for the said offence, it is proper. But as regards the default sentence imposed for the offence under Section 325, I.P.C. is concerned, as the maximum sentence prescribed for the offence under Section 325, I.P.C. is 7 years and as the Magistrate has imposed default sentence of two years S.I. which is more than one-fourth of the maximum sentence prescribed for the said offence, it is improper and not correct.

234. Arunakumar, Lakshman and Mohd. Rahim are friends. One day all the three went to a pan shop and asked for a cigarette packet. The pan shop owner demanded for money. They refused to give money but still demanded for the cigarette packet. When the shop owner refused to give, the three boys threw away the bottles and other articles in the pan shop and caused heavy loss to the shop keeper. There upon, the shop keeper filed a complaint in the court of the Judicial Magistrate of the First Class. After trial, the Magistrate convicted the three boys for an offence under Section 427, I.P.C. and sentenced each of them to pay a fine of Rs. 500/- in default to suffer S.I. for four months. As all the three boys did not pay the fine amount, they were committed to jail for undergoing default sentence. While they were undergoing default sentence, after the expiration of one month, an amount of Rs. 375/- was paid on behalf of A-1, Arunkumar, an amount of Rs. 250/- was paid on behalf of A-2, Lakshman and entire amount of Rs. 500/- was paid on behalf of Mohd. Rahim. Whether all or any of the accused can be released?

* Under Section 69, I.P.C., before the expiration of the term of imprisonment fixed in default of payment, such a proportion

of the fine be paid or levied that the term of imprisonment suffered in default of payment is not less than the proportion to the part of the fine still unpaid, the imprisonment shall terminate. That is, if the fine imposed on an accused is paid while he is imprisoned for default of payment, his imprisonment will immediately terminate and if a proportion of the fine be paid during the imprisonment, a proportional abatement of the imprisonment will take place. However, the court has no power to refund fine. So, in the case of A-3, Mohd. Rahim, as the entire fine amount has been paid, of course, after the expiration of one month, he shall at once be discharged but the proportionate fine for the one month imprisonment he has undergone cannot be refunded.

In the case of A-1, Arunkumar, as an amount of Rs. 375/- was paid after the expiration of one month of the imprisonment, he shall be discharged as he has undergone proportionate default sentence.

In the case of A-2, Lakshman, an as amount of Rs. 250/- was paid after the expiration of one month of the imprisonment, he will be discharged after two months.

235. Dayananda Rao was convicted for the offence under Section 304 Part I, I.P.C. and was sentenced to undergo R.I. for 10 years and also to pay a fine of Rs. 1,000/- and in default, to undergo S.I. for two years. He did not pay the fine amount. While he was undergoing imprisonment, he died after completing 8 years of imprisonment and the fine amount remained unpaid. Can the fine be written off?

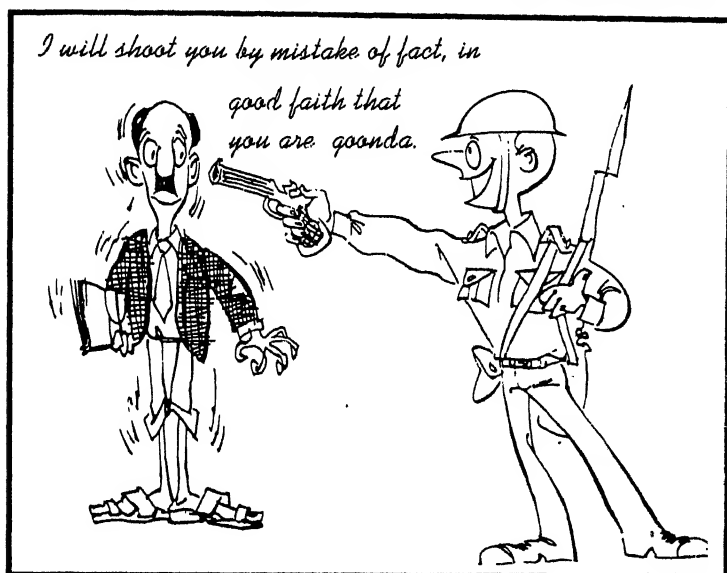
- * Under Section 70, I.P.C., the fine or any part thereof which remains unpaid may be levied at any time within six years after the passing of the sentence and if, under the sentence, the offender be liable to imprisonment for a longer period than six years, then at any time previous to the expiration of that period and the death of the offender does not discharge from the liability and any property which would, after his death be legally liable for his debts. So, the death of an offender does not discharge any property which would, after his death, be legally liable for his debts from liability to discharge any fine due from him.

236. Atchutha Rama Rao was working in the Accountant

General's Office as an Accountant. He was married and was also having a son. After some time, he was transferred to Bangalore. He alone went to Bangalore and joined there and was living in a room and he used to send money every month to his wife and used to visit bi-monthly. In the same office, Sailaja was working as a Clerk, who was unmarried and living in a room alone. Sailaja used to consult Atchutha Rama Rao for her doubts and used to talk with him by creating some work. They used to go to pictures together and visit their respective houses. One day while they were returning from a picture, there was heavy rain and as the house of Atchutha Rama Rao was very near to the cinema hall, he asked Sailaja to stay for that night in his house and she agreed. During that night they had sexual intercourse. Subsequently also they had intercourse twice or thrice. Sailaja became pregnant. But she could not notice her pregnancy till six months and when she consulted a lady doctor for abortion the doctor told her that it will be dangerous to her life as the pregnancy had already reached sixth month. Till then she managed as her pregnancy could not be noticed by others. After consulting the doctor she applied for leave and at last gave birth to a female child. She took the help of one Aya by paying her huge amount and she attended on her during the delivery. As she was unmarried and as her friend, Atchutha Rama Rao refused to take her as his wife and also refused to take the child, she thought of a plan and one midnight she took her child to a far off garden which was in the outskirts of the city and left the child so that it would die without any milk as no one would notice it in that garden. Accordingly, the child was not noticed by anybody and it died. Sailaja committed the offence of leaving her child with the intention of wholly abandoning it and also committed the offence of murder of her child. Whether she is liable for both the offences?

Under Section 71, I.P.C., where anything which is an offence is made up of parts, any of which parts is an offence, the offender shall not be punished with more than one of such offences unless it is so expressly provided. So, as Sailaja abandoned her child with the intention of wholly abandoning it and knowing that such abandonment was likely to cause its death and the child died in consequence of the abandonment, she could not be convicted and punished under Section 304 and also under Section 317, I.P.C. but under Section 304, I.P.C. only.

237. Communal riots took place in Hyderabad City. Many deaths took place and several Government properties were destroyed. The Government sought the assistance of C.R.P.F. and C.R.P.F. was posted. They did not know the local language. A mob was trying to attack the telephone exchange. The Assistant Commissioner of Police who was there saw this and could not control the same and so he ordered shooting. The C.R.P.F. opened fire at the mob which resulted in 10 deaths of innocent persons. Whether the C.R.P.F. Constables who fired at the innocent persons and caused their death are liable for punishment?



- * Under Section 76, I.P.C., nothing is an offence which is done by a person who is or who by reason of a mistake of fact and not by reason of a mistake of law, in good faith believes himself to be, bound by law to do it. So, as the C.R.P.F. Constables thinking in good faith that they are also goondas involved in destroying the telephone exchange fired at them which resulted in their death, it is a mistake of fact done in good faith and so it is not an offence and the C.R.P.F. Constables are not liable for any offence.

238. Ramana Dayal was involved in a murder case and he was arrested by the police during investigation but subsequently, he obtained bail from the High Court. However, after completing investigation, charge sheet was filed but thereafter, he did not

attend the court for any adjournments and ultimately, N.B.W was issued against him. He was absconding. One day, police obtained information that he was hiding in a hotel. The police armed with the photos of the absconding accused went to that hotel and found one person having the same identity of Ramana Dayal as was seen from his photo. Immediately, they arrested that person though he resisted that he was not Ramana Dayal, but his name was Ramakanth and he was produced before the Court and he was remanded to judicial custody. Thereafter, the real person was arrested in Punjab and was brought to the court and the first person who was in judicial custody was released. After his release, he made a complaint to the police for his wrongful arrest and detention. Can the police officers plead defence under Section 76, I.P.C.?

- * Under Section 76, I.P.C., nothing is an offence which is done by a person who is, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be, bound by law to do it.

As the Police Officers have arrested Ramakanth believing in good faith himself to be Ramana Dayal by reason of mistake of fact, they are not liable for any offence and they are guilty of no offence.

239. Ganapathi Rao was having Ac. 5-00 of land situated by the side of a reserve forest. Several wild animals like bears, etc., were moving in the reserve forest and they were coming into the neighbouring fields, eating and damaging the crops. So, Ganapathi Rao appointed a night watchman to watch the standing sugar cane crop. There was one short-cut foot path way running in between the field of Ganapathi Rao and the reserve forest. On one Amavasya day, as usual, the watchman was guarding the field. He was having a small gun and a torch light. At about 11-00 P.M., one person was coming through that path way from the neighbouring village to go to his native village. He was wearing boots and while walking, some sound was coming. At that time, the watchman was on the otherside of the field and he heard the sound from the forest side and he mistook the sound for a bear eating the sugar cane crop. Immediately, he fired the gun at the direction from which the sound was coming. The gun shot struck the man who was walking on the pathway and he fell down and died. Is he liable for the offence of murder?

Under Section 79, I.P.C., nothing is an offence which is done by any person who is justified by law or who by reason of a mistake of fact and not by reason of a mistake of law in good faith, believes himself to be justified by law in doing it. So, as the watchman has fired the gun at the direction of the sound in good faith believing that a bear is eating the sugarcane crop and has committed the said act by mistake of fact the watchman has committed no offence.

240. There is a Harijan Colony, in Ramayapeta. Most of the houses in that colony are thatched houses. On a Diwali day, on account of crackers, fire broke out at one end of the row of the houses and that house started burning. If it is allowed to continue, the entire colony will be burnt. So, five young boys immediately went up the roof of the neighbouring house and removed the thatch of that house and completely disconnected that house from the burning house so that the fire may not spread further. On account of disconnection, the fire extinguished. The house from which the thatch was removed by the five young persons was completely damaged. The owner of that house has filed a criminal case against the five young boys who removed the thatch from his house. Whether the five boys are liable for any offence?

- * Under Section 81, I.P.C., nothing is an offence merely by reason of its being done with the knowledge that it is likely to cause harm if it be done without any criminal intention to cause harm and in good faith for the purpose of preventing or avoiding other harm to person or property. So, in the above case as the five boys have removed the thatch without any criminal intention to cause harm and in good faith for the purpose of preventing further harm to the other houses in the colony and so though such act was done with the knowledge that it is likely to cause harm it is not an offence and the five boys are not liable for any offence.

241. Kiran Kumar, a boy of six years was studying in II Class. He was a bright boy. There was enmity between the father of Kiran Kumar and their neighbour. The father of this boy came to know that there would not be any offence if any offence was committed by a boy under seven years of age. The father of Kiran Kumar, one day gave a small bottle containing poison to his son and asked him to mix it in the drinking water pot of his

neighbour. Though the elder members of both families were at logger heads their children were playing together as they happened to be class mates. The boy innocently went to the house of the neighbour and mixed the poison in the drinking water pot. One of the inmates in that house died and on postmortem it was revealed that he died because of administering poison. During investigation, it was revealed that the boy, Kiran Kumar had mixed the poison in the drinking water pot. Whether the boy has committed any offence?



- * Under Section 82, I.P.C., nothing is an offence which is done by a child under seven years of age. So, if it is proved that the boy is under seven years of age, he will not be held liable for the act committed by him under Section 82, I.P.C.

242. Subba Ramayya was doing illicit business in Ganja and other prohibited items. He had a son Pradeep, aged about 9 years who was studying fourth standard in a convent. The father was utilising the services of his minor son for sending the ganja, opium and other prohibited items to the customers. One day, while Pradeep was taking a packet of Ganja for delivering the same to a customer, the Excise Inspector caught him red handed and seized the ganja packet from him and filed a charge sheet against him. The boy had not attained sufficient maturity of

understanding to judge the nature and consequences of the acts committed by him. Whether the boy has committed any offence?

- * Under Section 83, I.P.C., nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct, on that occasion. So, as Pradeep, the son of Subba Ramayya, is a boy aged 9 years, i.e., above seven years and under twelve years and who has not attained sufficient maturity of understanding to judge the nature and consequences of his conduct, though he was caught red handed when he was in possession of a ganja packet, he has not committed any offence.

243. Dayakara Rao is a poor man. He has wife, two sons and one daughter. Due to financial crisis, he is put to several troubles and ultimately, becomes a lunatic. He does not know what he is doing. He used to beat the persons, uttering words of irrelevant nature. Especially during full moon days and no moon days he becomes uncontrollable and in these days by reason of his unsoundness of mind is incapable of either knowing the nature of the act or that the act was either morally wrong or contrary to law. One day, one of his neighbours came to his house to see him. At that time he was under the complete control of lunacy and he beats the neighbour with a stick and the neighbour received an injury which resulted in a fracture of his right hand. Thereupon, the neighbour filed a complaint against Dayakara Rao. Whether Dayakara Rao has committed any offence?

- * Under Section 84, I.P.C., nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law. As Dayakara Rao is a lunatic and by reason of unsoundness of mind he is incapable of knowing the nature of the act and he has beaten the neighbour under the complete influence of lunacy, he is not liable for any offence.

244. Priya and Malini were studying B.A. They took a room on rent and were living jointly in that room. Priya was a bright student and she was always reading books and she did not move with friends. But Malini was not like that. She always used to move with boy friends. She used to go to pictures with boy friends

and also took drugs. Syam Sunder, one of the boy friends of Malini asked Malini to bring her friend Priya also along with her for a party on some false pretext. Malini requested Priya to accompany her to a birthday party of her friend and though she refused ultimately, Priya yielded to the request of Malini and accompanied her. Malini took Priya to the house of one of her boy friends and Malini and her boy friend took hot drinks and the boy friend, Syam Sunder had forcible sexual intercourse with Priya without her consent. On a complaint given by Priya, a case was filed against Syam Sunder. Syam Sunder pleaded that at the time of the alleged rape, he was under the influence of intoxication and he did not know what he had done and so he is not liable. Whether Syam Sunder is liable for any offence?

Under Section 85, I.P.C., nothing is an offence which is done by a person who, at the time of doing it, is, by reason of intoxication, incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law provided, that the thing which intoxicated him was administered without his knowledge or against his will.

As Syam Sunder himself consumed hot drink and the rape has been committed by him on Priya with a pre-plan with the active assistance and abetment of Malini, both Syamsunder and Malini are liable for punishment, but Syam Sunder could not claim the benefit of Section 85, I.P.C.

245. Ranganayakulu was suffering from accute appendicitis. He was taken to a doctor and after examining the patient, the doctor opined that the disease had reached uncontrollable stage and even if the operation was conducted, the patient will not survive. But still, the relatives of Ranganayakulu and Ranganayakulu himself insisted on conducting the operation, hoping that he may survive by chance. Thereupon, the doctor conducted operation but the patient died. Whether the doctor has committed any offence?

Under Section 88, I.P.C., nothing which is not intended to cause death, is an offence by reason of any harm which it may cause or by intended by the doer to cause or be known by the doer to be likely to cause, to any person for whose benefit it is done in good faith and who has given a consent, whether express or implied, to suffer that harm or to take the risk of that harm.

As the doctor, knowing that the operation is likely to cause the death of the patient Ranganayakulu, but not intending to cause his death and intending in good faith performed the operation with his consent, the doctor has not committed any offence.

246. Inter-State games were conducted in Lal Bahadur Stadium and many students under 14 years of age came from several States of the country and participated in the games. During the course of a cricket match, the cricket ball hit the head of the wicket keeper and he received a heavy bleeding injury. Immediately, the boy was admitted in the Osmania General Hospital. That boy belonged to Tamilnadu. The doctors felt that it requires urgent operation, otherwise the boy might not survive. Generally, while conducting any operation the consent of the boy's parent or guardian is necessary and as the parents of the boy were in Tamilnadu and as operation had to be conducted immediately, the doctor conducted operation in good faith, for the boy's benefit. Whether the doctor has committed any offence?

Under Section 92, I.P.C., nothing is an offence by reason of any harm which it may cause to a person for whose benefit it is done in good faith even without that person's consent, if the circumstances are such that it is impossible for that person to signify consent or if that person is incapable of giving consent and has no guardian or other person in lawful charge of him from whom it is possible to obtain consent in time for the thing to be done with benefit provided that this exception shall not extend to the intentional causing death or attempting to cause death, or doing of anything which the person doing it knows to be likely to cause death or voluntary causing of hurt or abetment of any offence.

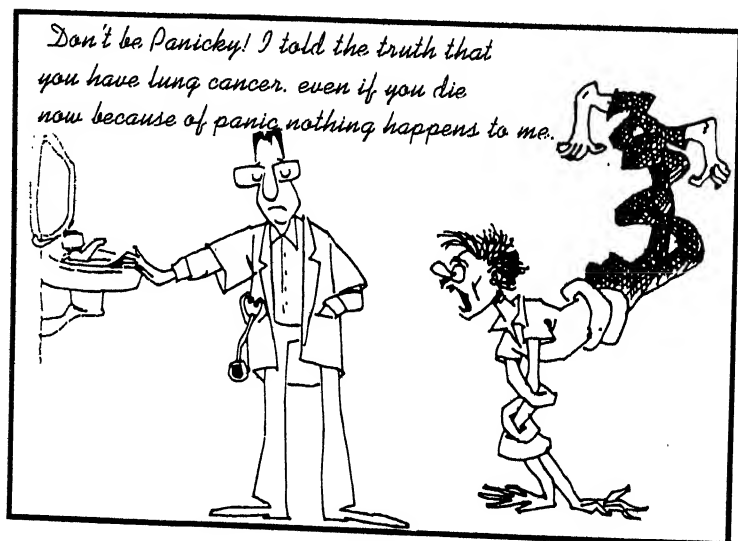
As the doctor has conducted the operation in good faith under the circumstances that there is no time to obtain the boy's parent's consent and as the operation is for the boy's benefit, the doctor has committed no offence.

247. There was a bomb blast incident in the third floor of Vijaya Apartments. The third floor was badly damaged and it was on flames. The inmates of the first and second floors came out. Almost all the third floor residents also came out. But on the third floor, two boys, Hari, aged 18 years and Giri aged 5 years

were caught and they could not come down. They were crying. Some persons below saw them and held out a blanket and Hari, the elder boy dropped Giri the younger boy from the third floor on the blanket spread by the persons on the ground thinking that the boy will fall on the blanket and he had done this in good faith for Giri's benefit. He also successfully jumped thereafter. However, Giri died. Whether Hari has committed any offence?

- * Under Section 92, I.P.C. nothing is an offence by reason of any harm which it may cause to a person for whose benefit it is done in good faith even without that person's consent. As Hari dropped the boy, Giri from the third floor intending in good faith for the boy's benefit but not intending to kill him and even if the child is killed by the fall, Hari has not committed any offence.

248. Giridhar, a well-to-do person aged about 45 years suddenly fell ill. His health was deteriorating day by day. He consulted several doctors in Hyderabad but no one could diagnose the disease. However, one Dr. Suresh, Cardiologist advised him to approach a doctor at Bombay who was stated to be an expert and gave him a letter. With that letter, Giridhar went to Bombay and consulted the concerned doctor. That doctor after taking X-Ray and conducting several tests, prepared a detailed report and put it in a sealed cover and handed it over to Giridhar asking him to give it to Dr. Suresh. Giridhar returned to Hyderabad and gave



the cover to Dr. Suresh who read it and informed him that he was having lung cancer and he will not survive for more than a month or so. On hearing the news Giridhar died of shock. Whether Dr. Suresh has committed any offence?

As Dr. Suresh in good faith communicated to the patient, Giridhar, his opinion that he cannot live and though the patient died in consequence of the shock, Dr. Suresh has not committed any offence.

249. Parandhamayya has got a daughter Sumalini. aged about 19 years. She was doing her second year B.A. Gireesh is the nephew of Parandhamayya. He could not get through B.A. inspite of several attempts. He did not evince any interest for education. He used to roam on the roads and got addicted to bad habits. Parandhamayya decided to perform the marriage of his daughter, Sumalini and he was searching for a suitable match. On coming to know, Gireesh came and asked his maternal uncle to give his daughter, Sumalini to him in marriage to which his maternal uncle as well as Sumalini refused. One day, when Gireesh came to his maternal uncle's house, Sumalini was alone. On seeing Sumalini in her bed room, Gireesh entered into the bed room bolted the doors from inside and attempted to pull out her saree to commit rape on her. The girl tried to resist and inspite of her resistance, he removed her saree. Then Sumalini took out a bottle, broke it and pierced the broken glass bottle into the stomach of Gireesh and Gireesh received grievous injury and subsequently, succumbed to it. Whether Sumalini has committed any offence?

Under Section 96, I.P.C., nothing is an offence which is done in the exercise of the right of private defence. Under the common law, the doctrine of necessity permitted one to defend one's person or property or the person or property of others against an unjustified attack by the use of reasonable force. As Gireesh attempted to commit rape on Sumalini by removing her clothes and as there was no assistance for her and there was also no time to take recourse to any official help, and in right of private defence of the person if she committed death of that person, she has not committed any offence.

250. Mohd. Farooq was working as an officer in State Bank of India. He has got a son, aged 18 years and a daughter aged

about 12 years. The boy was studying B.E. Mohd. Farooq developed illicit contact with a lady, Vanajakshi, who was also an employee in the same Branch. She was a widow, aged about 35 years. Though she was also an employee, she was asking Mohd. Farooq for gold jewels off and on, and Mohd. Farooq was giving whatever she asked. One day, she asked for a Diamond ring which his wife was having. Mohd. Farooq asked his wife to give the diamond ring which she refused to give, and in that connection there was a tussle between the couple. In that tussle, Mohd. Farooq was about to strangle her. His son saw all this from a distance and immediately he took out a paper weight available on the table and threw it on the head of his father and Farooq sustained a head injury which ultimately resulted in his death. Whether the son of Farooq has committed any offence?

Under Section 97, I.P.C., every person has a right to defend his own body and the body of any other person against any offence affecting the human body. Under circumstances, which might have induced the belief that a man was pressing the throat of his wife, their son hit and killed his father and in such circumstances if the son had reasonable ground for believing and honestly believed that his act was necessary for the defence of his mother, the homicide was excusable.

251. Raids were being conducted by the excise officials to find out the place of manufacture of illicit arrack. During the course of one such raid, they got information that the house of Ramayya was being utilised for manufacturing illicit arrack and after manufacturing illicit arrack, it was being transported from his house to several places. The excise officials could not obtain any search warrant, as, before they started for conducting the raid they had no information of any particular house. On the way, they learnt about the manufacturing of illicit arrack in the house of Ramayya. On that information, they went to the house of Ramayya and tried to enter it to search for the illicit arrack. Ramayya insisted for a warrant and said that without a warrant issued by a court they cannot enter into his house. But, still, the Excise Officers entered into the house and conducted the search. Ramayya and his men obstructed the Excise Officials in making the search and in that they attacked the Excise Officials and caused injuries to some of them. Whether the accused are liable for any offence or whether the acts committed by them were in right of private defence?

Under Section 99, I.P.C., there is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by a public servant acting in good faith under colour of his office though that act may not be strictly justifiable by law. So, the Excise staff attempted to enter into the house of Ramayya without a search warrant in search of illicit arrack said to have been manufactured in his house and as such, search was obstructed and resisted by Ramayya and his men and caused injuries to some of the excise staff, the persons obstructing and resisting could not set up illegality of the officer's proceeding without a warrant as a justification of their obstructing and causing injuries to them and they had no right of private defence in such circumstances.

252. Gnana Sekhar and Prabhu were close friends. They both entered into a Bar and had Brandy. The server has tendered him the bill, but without paying the bill both the boys came out of the Bar. When the Server came out and demanded for the bill amount, they started running away. The Hotel Server chased them to some distance. When they reached a nearby garden, Gnana Sekhar took out a knife which he was holding and stabbed the Hotel Server. The hotel server received a grievous injury. On a complaint given by him, the police investigated into the case and filed a charge sheet against Gnana Sekhar and Prabhu. They raised the plea of right of private defence. Whether they are entitled to take that plea?

Under Section 100, I.P.C., the right of private defence of the body extends to the voluntary causing of death or of any other harm to the assailant if the offence which occasions the exercise of the right be of such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault, or an assault with the intention of kidnapping or abducting. When both the persons, Gnana Sekhar and Prabhu were running from the hotel without making payment of the bill and when they were chased by the server of the hotel so that the price of the drink they have taken could be recovered from them or they may be handed over to the Manager of the hotel for non-payment of the bill, Gnana Sekhar and Prabhu cannot be allowed to take advantage of their own misdeed and claim right of private defence under Section 100, I.P.C., saying that since there was an assault

with a view to abducting them, they were justified in stabbing the hotel server.

253. There were long standing disputes between two groups in Kadiri, on account of elections to the post of President of Co-operative Society. One party was led by Mukundarao, who contested for the part of President and lost the election. The other party was led by Govinda Rajulu, who was elected as president. Since the elections, there were differences between the two groups. One day, there was an attack by the group of Mukundarao on the group of Govinda Rajulu in which, one person of Govindarajulu's group, was killed by the persons of Mukundarao and a case was filed against the persons who were responsible for the murder of that person. The case reached the stage of trial and the supporters of Govinda Rajulu, who received summons for giving evidence in the said case came to the bus stop to go to the court. Having come to know of the same, Mukundarao's people waylaid just before the bus stop and attacked them with sticks and knives. When Govindarajulu's persons were running through the fields, Mukundarao's people chased them and one of them beat one person of Govinda Rajulu's group with a stick and was about to again beat him on his head and if that blow falls on his head, he would certainly die. At that stage, that person snatched the stick from the assailant and beat him and that person died. A case was filed against the persons of Govindarajulu for the death of the person of Mukundarao group. These accused took a plea of right of private defence. Whether they are entitled to the plea of right of private defence?

Under Section 102, I.P.C., the right of private defence of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence though the offence may not have been committed and it continues as long as such apprehension of danger to the body continues. The right arises as soon as a reasonable apprehension arises and continues till the threat continues. When Mukundarao's persons were chasing and one of them beat one person of Govindarajulu's group reasonable apprehension arises and so Govindarajulu's group persons are entitled to the plea of right of private defence.

254. A Gurkha was appointed to guard Punjab National Bank at Ramanthapur. A gang of five persons armed with weapons

came there and attacked that Bank. They tied the Gurkha to a pole and entered the Bank and opened the cash chest. In the meantime, the Gurkha with the help of a pistol and small knife which was in his pocket, got himself released and fired his pistol at the gang and three persons of the gang died. Whether the Gurkha is entitled to plead right of private defence?

Under Section 103, I.P.C., the right of private defence of property extends to the voluntary causing death or of any other harm to the wrong doer if the offence the committing of which or the attempting to commit which occasions the exercise of the right, be an offence of robbery or house breaking by night or mischief by fire or theft etc., A person employed to guard the property of his employer is protected by Sections 97, 99, 103 and 105 and if he causes death in safeguarding his employer's property when there is reason to apprehend that the person whose death has been caused was about to commit one of the above said offences or to attempt to commit one of those offences is entitled to plead right of private defence. So, in the above case, the Gurkha is entitled to plead right of private defence.

255. Communal disturbances reached its peak in Hyderabad old city. One day, at about 11-00 A.M. some persons were attacking Chakradhar, who was a resident of old city. They were throwing stones against him and also beating him with sticks. He was having a gun but he did not use it for sometime fearing that it may cause death of any person. But he could not effectively control the mob. There was an elementary school at that place and the children were coming out on hearing the noise and the assailants were hiding behind the children and were throwing stones. One person behind a small boy was about to throw a knife against him. If he was allowed to throw it, Chakradhar would have died. So, immediately he fired the gun at that person but it hit the boy who is in front of that assailant. Whether, Chakradhar committed the offence of murder and wheher he can plead right of private defence?

Under Section 106, I.P.C., if, in the exercise of right of private defence against an assault which reasonably causes the apprehension of death, the defender be so situated that he cannot effectually exercise that right of private defence without risk of harm to an innocent person, his right of private defence extends to the running of that risk. Injury to innocent

persons in the exercise of right of defence is excusable under Section 100, I.P.C. So, Chakradhar is entitled to plead right of private defence.

256. Sumalatha was given in marriage to Phani Bhushan. At the time of the marriage, the parents of Sumalatha gave some articles besides a dowry of Rs. 25,000/-. Her mother-in-law dissatisfied with the articles she brought and felt that they were not according to their status. Everyday, she used to throw away some article or the other grumbling about her daughter-in-law. She was pointing out to Sumalatha that she brought very less articles and dowry. She also said, had her son married some other lady, he would have got more dowry, more Adapaduchu katnalu and articles. She was also saying that if she died she would remarry her son and get more dowry, etc. She was also using unbearable words. One day, as usual, she began to scold her daughter-in-law and suggested that she may drink bagonspray which was readily available in the house and die so that they will get rid of her. Sumalatha felt that taking of Bagonspray would be the best course for her and immediately consumed it. Even though the mother-in-law was seeing her daughter-in-law taking the bagonspray bottle and pouring it in a glass and drinking the same, she did not object and in a way encouraged her to take it. After some time, Sumalatha died. Whether the mother-in-law is liable for any offence for the death of Sumalatha?

- * Under Section 107, I.P.C., if a person instigates any person to do that thing is said to have abetted the said offence and a person who intentionally aids by any act or illegal omission the doing of that thing is also said to have abetted the doing of that act. So, as the mother-in-law of Sumalatha knows well that if anyone consumes Baygon, he or she will die and knowingly, she instigated her daughter-in-law, Sumalatha to consume Baygon and did not object when she was consuming it. So, the mother-in-law is guilty of the offence of abetment to commit suicide punishable under under Section 306 r/w. 107, I.P.C.

257. Vijayakumar married Kanakadurga and at the time of their marriage, the parents of Kanakadurga gave Rs. 50,000/- as dowry and also other articles. Some time after the marriage, the mother-in-law and also Vijayakumar started illtreating Kanakadurga. During the festival of Pongal, Vijayakumar and

his wife Kanakadurga went to Kanakadurga's parents house. Vijayakumar left his wife at her parents house and returned saying that he would come again and take her back. But he did not turn up. The mother of Vijayakumar settled another match for her son, Vijayakumar for a dowry of Rs. 1 lakh and also other Lanchanams on a large scale. As it was a second marriage, they wanted to perform the same in Venkateswara temple. Some of the close relatives of Vijayakumar attended the marriage. The purohit was the same purohit who performed the first marriage of Vijayakumar with Kanakadurga and he knew that the marriage of Vijayakumar was still subsisting with Kanakadurga. Among the visitors, the close relations of Vijayakumar were his maternal uncle, and maternal aunt, his brother-in-law and sister and his parents and the purohit and all of them knew that the marriage of Vijayakumar with his first wife, Kanakadurga was still subsisting. They had wilfully concealed the material fact of first marriage of Vijayakumar. All of them have abetted the second marriage. Whether they are liable for any offence?

- * Under Section 107, I.P.C., a person who abets the doing of a thing or who instigates any person to do that thing or who intentionally aids, by any act or illegal omission the doing of that thing is said to commit the offence of abetment. Under explanation I to Section 107, I.P.C., a person who by wilful misrepresentation or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures or attempts to cause or procure, a thing to be done is said to instigate the doing of that thing.

As the parents, maternal uncle and maternal aunt, sister and brother-in-law of Vijayakumar and the purohit, having known the factum of the first marriage of Vijayakumar with Kanakadurga is still subsisting, wilfully concealed to disclose the same which they are bound to disclose and as they have abetted the performance of second marriage, they are liable for the offence under Section 494 r/w. 107, I.P.C.

258. Durga Prasad and Dharma Rao were partners in rice business. That business was flourishing well and they were getting good profits. With regard to the distribution of profits, differences arose between the partners. Durga Prasad thought of eliminating Dharma Rao so that he could take the entire profits earned by the firm. Keeping that in view, Durga Prasad arranged

a party on the eve of earning good profits by the firm and invited their five best friends. He told the son of the servant maid, who was aged about seven years and studying second class, to put poison in one glass and give that glass to Dharma Rao. But by mistake, while placing the glasses, the poisonous glass was placed at the table of another person but not before Dharma Rao. That person dies after drinking the water. As his death appears to be a suspicious one, postmortem was conducted and it was revealed that he died of administering poison. Whether Durga Prasad, who instigated the boy to put poison in the glass, is liable for the death of that person?



- * Under Section 111, I.P.C., When an act is abetted and a different act is done, the abetter is liable for the act done in the same manner and to the same extent as if, he had directly abetted it. As Durga Prasad has abetted the boy to put poison in a glass intended to be given to Dharma Rao and though it was given to another person who after drinking that water, died, Durga Prasad is liable to the same extent as if, he had directly abetted it.

259. Kanakayya's wife Suramma fell ill. In spite of giving medicines she could not recover her health. Some of his well-wishers advised him that it was the effect of sorcery and unless the teeth of sorcerer is removed, she would not recover. Thereupon, Kanakayya engaged a person to remove the teeth of Gopinatha

guards the gate while the remaining two persons enter into the house and commit theft of gold jewels and cash. When Agarwal tries to resist them, they beat him with a stick and he dies. Whether Narender who was standing outside the house at the gate is also liable for the murder of Agarwal along with the other two persons?

- * Under Section 114, I.P.C., whenever any person who if absent would be liable to be punished as an abettor, if present when the act or offence for which he would be punishable in consequence of the abetment is committed, he shall be deemed to have committed such act or offence. As Narender, a conspirator who, while his friends entered into the house and looted and killed Agarwal, stood and guarded outside in pursuance of the common design, is also liable along with the two persons for the murder of Agarwal.

261. Prabhakar Reddy and Sudhakar Reddy were two brothers. They were having some joint property. Difference arose between them and elders intervened and partitioned the properties between the two. Prabhakara Reddy was allotted S.No. 220/1 and Sudhakara Reddy was allotted S.No. 220/2, thinking that both were of equal extent. Prabhakara Reddy claimed that the land allotted to Sudhakara Reddy i.e., S.No. 220/2 was more in extent than the land situated in S.No. 220/1 allotted to him. Again, the matter was referred to elders. The elders decided that the matter be referred to Survey and Settlement officer for survey of the land and if on survey, if there was any excess land over the other, that person having excess land shall pay half the value of that excess land. It was accordingly agreed and they put in an application to the Survey and Settlement Officer for surveying the land. While the application was in process, Sudhakara Reddy, who got excess land, approached the Survey Officer and requested him to do him a favour by making wrong survey. He also offered Rs. 1,000/- as bribe for doing that favour. The Survey Officer refused to receive the amount. He immediately reported the matter to the police that Sudhakara Reddy has offered him a bribe of Rs. 1,000/- for doing him a favour. Whether Sudhakara Reddy has committed any offence?

Under Section 116, I.P.C., whoever abets an offence punishable with imprisonment shall, if that offence be not committed in consequence of the abetment and no express provision is

made by I.P.C., for punishment of such abetment, be punished with imprisonment of any description provided for that offence for a term which may extend to one-fourth part of the longest term provided for that offence or with such fine as is provided for that offence or with both. As Sudhakara Reddy offered bribe to the Survey Officer for doing a favour and as the Survey Officer has not committed that act, Sudhakara Reddy is liable for punishment under Sec. 116, I.P.C.

262. Hasan Samad, Kristappa and Mahindra were friends. They were habitual thieves. They were also terrorists and were escaping from the police since a long time. One day, they decided to loot the house of a Forest Contractor. Police received information that Hasan Samad and his followers were moving in that village and they also entered into that village. On coming to know of the arrival of police, the three terrorists entered into the house of Village Officer and gave him some money and requested him not to reveal their presence to the police. As usual, the Police came to the house of the Village Officer and asked about the whereabouts of the three terrorists, who were believed to be in that village. The Village Officer innocently said that those persons were not in that village. He further told the police that he got information that they were in the neighbouring village which was about 4 kilometers from there and misled them to go to that village. Believing the statement of the Village Officer, who was a public servant, the police left the village for the neighbouring village in search of terrorists. Immediately thereafter, as per the plan, the terrorists entered into the house of the Forest Contractor, killed him and looted his properties. Whether the Village Officer, who had given false information to the Police, is liable for any offence?

Under Section 119, I.P.C., whoever being a public servant intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence which is his duty as such public servant to prevent, voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design, shall, if the offence be committed, be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the longest term of such imprisonment or with such fine as is provided for that offence or with both;

or if the offence be punishable with death or imprisonment for life, with imprisonment of either description for a term which may extend to ten years.

As the Village Officer, who is a public servant, knowing it to be likely that he will facilitate the commission of an offence by the three terrorists and as a public servant it is his duty to prevent such commission of offence, has facilitated the terrorists to hide and allowed them to commit the offence of murder and theft of properties, he is also liable for punishment for a term which may extend to ten years.

263. There is political rivalry between Rajaram and Narayana Goud. In the Panchayat elections, Rajaram succeeded in defeating Narayana Goud. Narayana Goud is maintaining goondas and rowdies. He felt that Rajaram is coming in his way in getting his works done. So he wanted to eliminate Rajaram. On coming to know that Rajaram is going to Madras, he sends his goondas to Madras giving suitable instructions to them to kill Rajaram by throwing bombs. He sends the goondas even before Rajaram started to go to Madras. After Rajaram left for Madras, he contacts the goondas on telephone about the movements of Rajaram. However, the persons of Rajaram overhear the telephonic message and they taped the telephone message also. But they could not convey the said message to Rajaram intime. The goondas of Narayana Goud follow Rajaram, when he is going from the guest house to Beach Road in the evening time. Finding that he is alone, the goondas of Narayana Goud, who followed Rajaram, hurled a bomb on Rajaram and the bomb exploded and Rajaram dies. After hurling the bombs the goondas of Narayana Goud started running. Some persons at the beach were watching the movements of the goondas and also their hurling bomb on Rajaram and they chased the goondas and one of the goondas was caught while others escaped. He was handed over to police. On interrogation by the Police, he confessed that Narayana Goud engaged him and other goondas to do away Rajaram, his political opponent, by hurling a bomb at him. Whether Narayana Goud is also liable for any offence?

- * Under Section 120-B, I.P.C., whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy,

be punished in the same manner as if he had abetted such offence.

As Narayana Goud has entered into an agreement with the goondas to do away with the life of his political opponent, Rajaram he is said to have committed criminal conspiracy under Section 120-A, I.P.C. Under Section 120-B, I.P.C., whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in the I.P.C. for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

Since, Narayana Goud is a party to the criminal conspiracy to commit the murder of Rajaram, he is liable for punishment in the same manner as the goondas, engaged by him who have committed the murder of Rajaram, are liable.

264. A procession was sought to be taken in connection with Jayanthi of Valmiki Mahamuni. Permission was taken by the leaders of the procession from the Asst. Commissioner of Police for leading the procession through a particular route. Contrary to the permission granted, they deviated the route and they diverted the route through another road. Though the police, who were guarding them, also prevented them from diverting the route, the processionists did not hear. The Executive Magistrate also on information came there and warned them not to divert the route. But the processionists did not heed their advice and they led the procession through a route for which there was no permission. Whether they are liable for any offence?

Under Section 141, I.P.C., an assembly of five or more persons is designated an 'unlawful assembly' if the common object of the persons composing that assembly is to resist the execution of any law or of any legal process.

As the permission was taken for a procession through a particular route but the processionists violated the conditions of the permission, which prescribed the route and the limit up to which the procession was permitted to proceed and on being directed by the police and the Magistrate not to do so, a group of processionists made a determined effort to break through the police cordon; the procession constitutes an unlawful assembly and under Section 143, I.P.C., whoever is

a member of an unlawful assembly shall be punished with imprisonment of either description for a term which may extend to six months or with fine or with both.

265. Shiva Kumar entered into an agreement with Srikanth for sale of his flat for Rs. 5 lakhs. To avoid stamp duty, Srikanth wanted to put lesser value in the sale deed. He did not follow the required procedure before purchasing the flat by obtaining income-tax clearance and other formalities. In order to avoid stamp duty, he went to the Registrar's Office and met the concerned clerk and expressed that he purchased a flat for Rs. 5 lakhs and he wanted to register the sale deed for a lesser amount. The clerk in his turn approached the concerned Sub-Registrar and after consulting him, came back and demanded Rs. 10,000/-, as a bribe for registering the sale deed for a very less amount of Rs. 1 lakh so that he could save huge amount by way of stamp duty. He also told that out of the Rs. 10,000/- half of it will go to the Sub-Registrar and the remaining half had to be distributed among the staff members and he would not get more amount. Thereupon, Shivakumar returned and informed the A.C.B. people about the demand made by the clerk. The A.C.B. people arranged a trap against the clerk and the Sub-Registrar. They prepared a mediators report, took Rs. 10,000/- and showered phenolphthalein powder on the notes and gave the same to Srikanth for being given to the clerk. According to the instructions of the A.C.B. people, Srikanth went to the Registrar's Office and gave Rs. 10,000/- to the clerk as demanded by him who in his turn immediately went to the Sub-Registrar and gave half of it to him and kept the remaining half with him. In the meantime, as per the trap, the A.C.B. people came, revealed their identity and asked the clerk and the Sub-Registrar to wash their hands in a glass of water and while doing so the water turned into coloured water and thereupon they asked both the persons to give the amount and they produced Rs. 5,000/- each and compared the numbers of these notes with the numbers noted in the mediators' report. They tallied and thereupon they booked a case against both the clerk and the Sub-Registrar. Whether the clerk and the Sub-Registrar have committed any offence under the Indian Penal Code?

- * Whoever, being a public servant, accepts for himself or for any other person any gratification whatever, other than legal remuneration for doing any official favour, under Section

161, I.P.C., he is liable to be punished with imprisonment of either description for a term which may extend to three years or with fine or with both.

As the clerk and the Sub-Registrar, being public servants, accepted illegal gratification from Srikanth for doing a favour, viz., for registering the sale deed for a lesser value, both are liable for the offence under Section 161, I.P.C.

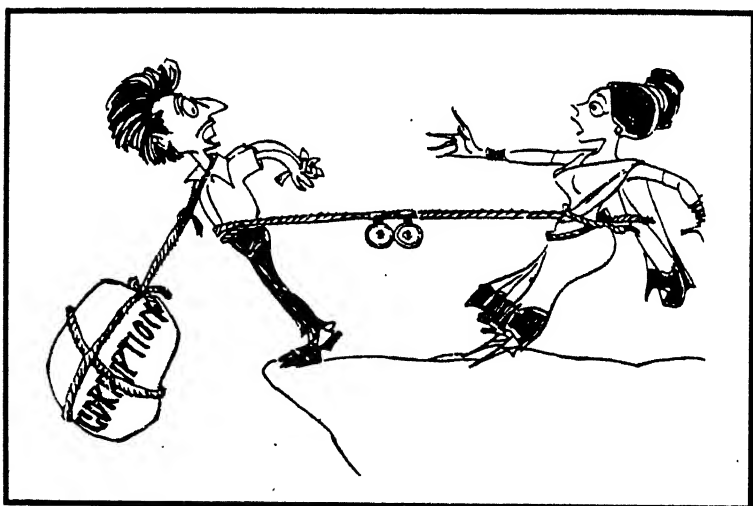
266. An advertisement was published in daily newspapers calling for applications for the post of Junior Assistant in the Collector's Office. It was reserved for S.T. Kiran Banj Deo belonged to a forward caste. Taking advantage of his name which is akin to Scheduled Tribe name, he approached the Mandal Revenue Officer for issuing a caste certificate in his favour and he offered Rs. 1,000/- for doing that favour. The Mandal Revenue Officer accepted the bribe offered by Kiran Banj Deo and granted the certificate as desired by the individual. Whether the M.R.O is liable for any offence?

- * Under Section 161, I.P.C., whoever being a public servant accepts or obtains from any person for himself any gratification other than legal remuneration for doing any official act is liable to be punished with imprisonment of either description for a term which may extend to three years or with fine or with both. As the Mandal Revenue Officer has accepted illegal gratification for giving false caste certificate, he is liable for the offence under Section 161, I.P.C.

Kiran Banj Deo having offered bribe to the Mandal Revenue Officer, who is a public servant for issuing a false certificate, under Section 109, I.P.C., Kiran Banj Deo has abetted the offence defined in Sec. 161 committed by the M.R.O. and so, he is also liable to be punished with the same punishment imposed against the M.R.O.

267. Chandrasekhar is working as a Superintendent Engineer in Public Works Department. He is in charge of allotting contracts upto Rs. 10 crores. There is a rumour that this S.E is taking money through his wife for accepting the tender, even for higher amounts even though tender lower bid amount is available. Ratna Kumar Reddy has also submitted a tender for constructing a building for the Collector's Office. Though he offered the lowest bid amount, his contract was not accepted. He comes to

know that the contractor whose contract was accepted has given money to the Superintendent Engineer through his wife. He gives a complaint to the A.C.B. people who arranged a trap for the next contract and it is proved that the wife of the S.E. has taken money for giving the same to her husband and to accept the tender of Ratna Kumar Reddy. Whether the wife of the S.E. is also liable for punishment along with the S.E.?



- * Under Section 164, I.P.C., whoever, being a public servant, in respect of whom either of the offences defined in Sections 162 or 163, I.P.C. is committed, abets the offence shall be punished with imprisonment of either description for a term which may extend to three years or with fine or with both.

As the wife of Chandrasekhar, the Superintendent Engineer has received the amount from the contractor and given it to her husband for accepting the tender of the said contractor, the Superintendent Engineer abetted her and so the wife is punishable with imprisonment for a term not exceeding one year or with fine or with both, and the S.E is punishable with imprisonment for a term which may extend to three years or with fine or with both.

268. Dwarakanath is a land grabber. He has occupied unauthorisedly five acres of Government land and sets up title to that land and claims that he is the owner of it. He files an application before the Collector for making necessary entries in the revenue records showing his name in respect of that particular

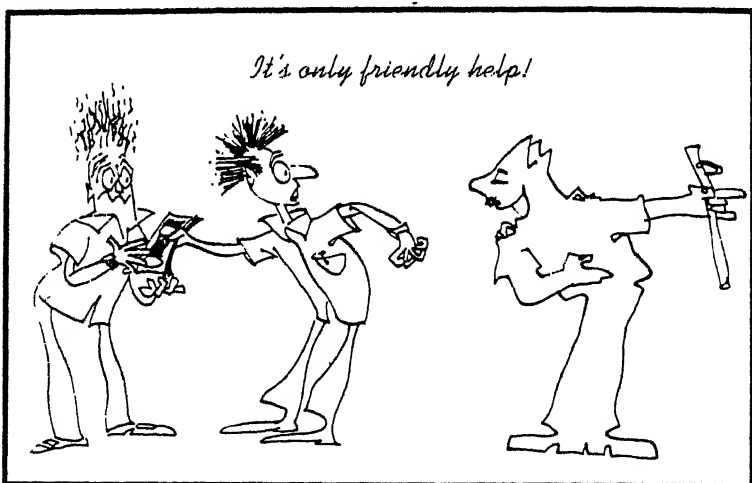
land as a owner and for ratifying his possession. While that application is pending consideration, he offers to sell his house situated at Srihariraopet colony to the Collector for a nominal value of Rs. 2 lakhs though its original value is more than double the said amount. The Collector has accepted the price and has taken a regular sale deed. Whether the Collector is liable for any punishment?

- * Under Section 165, I.P.C., whoever, being a public servant, accepts or obtains, or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate, from any person whom he knows to have been or to be, or likely to be concerned in any proceeding or business transacted or about to be transacted by such public servant or having any connection with the official functions of himself or of any public servant or having any connection with the official functions of himself or of any public servant to whom he is subordinate or from a person whom he knows to be interested in or related to the person so concerned, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

As the Collector, knowing fully well that the application of Dwarakanath for making entries in the revenue records showing his name as the owner of the 5 acres of land which is in his possession is pending for consideration before him, has purchased valuable house for a consideration which he knows to be inadequate, he is liable for punishment under Section 165, I.P.C.

269. Elections were being held for Ponnur Gram Panchayat. Veerabhadrayya contested for the post of Sarpanch of the Gram Panchayat and Somasekharam contested against Veerabhadrayya. There was a neck-to-neck fight between the two candidates. On the day of election, Prabhakar Rao on behalf of Veerabhadrayya, approached Sambayya, who was a voter in 4th ward of Ponnur village and offered him a sum Rs. 5,000/- for being distributed to the residents of that colony with the object of inducing him and the residents of that colony to exercise their franchise in favour of Veerabhadrayya. On prior information, the persons of Somasekharam gave a complaint to the Police, who in their turn put some persons to watch the movements of the persons of Veerabhadrayya and when the amount was being distributed

Police came and arrested both the giver and taker, viz., Prabhakar and Sambayya. Whether Prabhakar and Sambayya have committed any offence?



- * Under Section 171-B, I.P.C., whoever gives a gratification to any person with the object of inducing him or any other person to exercise any electoral right or of rewarding any person so having exercised any such right or accepts either for himself or for any other person any gratification as a reward for exercising any such right or for inducing or attempting to induce any other person to exercise any such right commits the offence of bribery, they are liable for punishment under Section 161, I.P.C.

As Prabhakara Rao has given amount to Sambayya for exercising electoral right in favour of Veerabhadrayya and as the latter has also accepted the same, both are liable for the offence under Section 161, I.P.C.

270. Srihari and his mother Saraswathi poured kerosene and lit fire to Chayakumari, the wife of the former and the daughter-in-law of the latter as she did not get gift articles from the parent's house given at the time of marriage according to their status and her husband, Srihari was not given sufficient dowry. Thereupon, police filed a case against Srihari and his mother under Section 498-A, IPC. Raghavendra Rao was a neighbour to Srihari and he was a circumstantial witness to the case and his name was cited in the charge sheet and when the trial had begun, the Sessions Court, issued summons to Raghavendra Rao for

attending the court on a particular day for giving evidence in that case. Having received the summons Raghavendra Rao did not appear before the said court for giving evidence. Whether Raghavendra Rao has committed any offence?

- * Under Section 174, I.P.C., whoever, being legally bound to attend in person at a certain place and time in obedience to summons, notice, order etc., from any public servant, legally competent, to issue the same, intentionally omits to attend at that place at that time as noted in the summons, shall be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to Rs. 500/- or with both. So, as Raghavendra Rao, having received the summons, did not attend the court on the date and time mentioned in the summons to give evidence in the said case, he is liable for the above said punishment.

271. Dr. Vivekanand was working as a Civil Assistant Surgeon in a Government hospital. One day, there was a fight between two parties in a nearby village in which one person died and he was brought to the Government hospital for conducting postmortem examination. The doctor conducted the postmortem examination and gave a copy of postmortem certificate to the Investigating Officer keeping the original with him. While the trial of the case, filed for the death of that person was in progress, summons were issued to the doctor for producing the original postmortem certificate which was in his possession. But the doctor who was keeping the original postmortem certificate in his custody, refused to produce the said certificate. Whether he is liable for any punishment ?

- * Under Section 175, I.P.C., whoever, being legally bound to produce or deliver any document to any public servant, as such, intentionally omits so to produce or deliver up the same, shall be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to five hundred rupees or with both. So as Dr. Vivekanand, who is in possession and custody of the original postmortem certificate and who is legally bound to produce the same in court, intentionally refused to produce the same in court, he is liable for punishment under Section 175, I.P.C.

272. There was a furniture shop maintained by Sagar Reddy. In that shop, steel almyrahs, chairs, cots, etc., were being

assembled. Syamala Rao was a worker in that furniture shop. One day, while he was lifting a big almyrah, it fell on him and as it fell on his chest, he immediately died. The Proprietor of that shop, Sagar Reddy was also there but he did not inform the police about the death of the worker, Syamala Rao. Whether he is liable for any punishment?

- * Under Section 176, I.P.C., whoever, being legally bound to furnish information on any subject to any public servant, as such intentionally omits to furnish such information in the manner and at the time required by law, shall be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to five hundred rupees or both. As Sagar Reddy, the proprietor of the shop, who is legally bound to furnish information to the police about the death of a worker working in his work shop by accident, has failed to furnish the said information to the police, he is liable for punishment under Section 176, I.P.C.

273. Kittodu committed theft of railway property, viz., iron rods and iron mesh wire, and sold the same to Tulasiram, who was a dealer in hardware material. On a complaint given by the railway officials, the railway police investigated into the case and arrested the accused Kittodu who confessed that he sold the stolen railway property to Tulasiram. The police searched the shop of Tulasiram in the presence of mediators and they could trace out the stolen railway property. When the police questioned Tulasiram as to how he came into possession, he refused to answer the questions put by the police. The police got a mediators' report prepared for the search and seizure of the railway property and asked Tulasiram to sign the statement. He refused to sign the statement. Whether Tulasiram is liable for any offence for refusing to answer the questions put by the police and also for refusing to sign the statement?

- * Under Section 179, I.P.C., whoever, being legally bound to state the truth on any subject to any public servant, refuses to answer any question demanded of him touching that subject by such public servant, in the exercise of the legal powers of such public servant shall be punished with simple imprisonment for a term which may extend to six months or with fine which may extend to Rs. 1,000/- or with both.

Similarly, under Section 180, I.P.C., whoever refuses to sign

any statement made by him when required to sign that statement by a public servant legally competent to require that he shall sign that statement shall be punished with simple imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees or with both.

As Tulasiram, in whose shop the stolen railway property was recovered, has refused to answer the questions put by the investigating officer and also refused to sign the statement, he is liable for punishment under Section 179 and 180, I.P.C.

274. Doulat Ram is a very rich and influential person. He has one son. He performs his son's marriage on a grand scale. Several visitors of high status and high dignatories, friends and relatives attend the marriage. Premchand Agarwal had a daughter. Earlier he offered to give his daughter in marriage to the son of Doulat Ram to which Doulat Ram refused. Bearing grudge for refusing to give his son in marriage to his daughter, Premachand hatches up a plan and informs the police against Doulat Ram stating that there is fake currency in the house of Doulat Ram and he is dealing in fake currency notes. The police come to the house of Doulat Ram at the time of the marriage and on seeing the police, Doulat Ram asks the police the purpose of their coming and the police tell him that they received information that he is having fake currency. So saying the police searched the house of Doulat Ram and could not trace any fake currency in his house



but only genuine currency. The report given by Premchand Agarwal is proved to be false. Whether he is liable for any offence?

- * Under Section 182, I.P.C., whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause to use the lawful power of such public servant to the injury or annoyance of any person shall be punished with imprisonment of either description for a term which may extend to six months or with fine which may extend to one thousand rupees or with both. As Premchand Agarwal, has given false information to the police that Doulat Ram is having fake currency in his house, which he knows or believes to be false, intending to cause annoyance to Doulat Ram as the police people have gone there and searched his house, Premchand Agarwal is liable for punishment under Section 182, I.P.C.

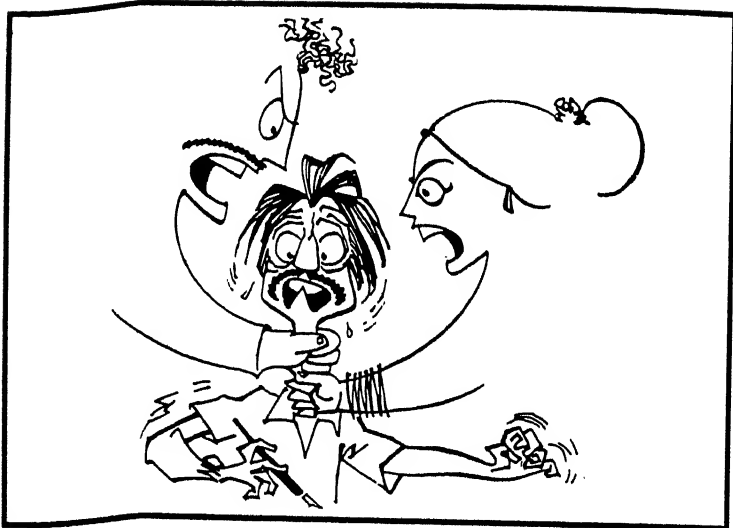
275. Income tax Department attached a building of Keshav Agarwal for non-payment of huge amount of income-tax payable by him. Keshav Agarwal tried to avoid auction of the building attached but he could not succeed. Ultimately, the Income Tax Department put the property in public auction on one day. Keshav Agarwal hatched up a plan and colluded with his friend, Santhosh Agarwal and asked him to participate in the auction and bid for the highest amount. Accordingly, Santhosh Agarwal bid for the highest amount under a false name and he was declared to be the highest bidder. When the sale was confirmed in that fictitious name, which the department did not know, he denied that he ever made any bid at all. Whether Santhosh Agarwal, who actually participated in the auction under a false name, is liable for any punishment?

- * Under Section 185, I.P.C., whoever at any sale of property held by the lawful authority of a public servant, as such, purchases or bids for any property on account of any person, whether himself or any other, whom he knows to be under a legal incapacity to purchase that property at that sale or bids for such property not intending to perform the obligations under which he lays himself by such bidding, shall be punished with imprisonment of either description for a term which may extend to one month or with fine which may extend to two hundred rupees or with both.

As Santhosh Agarwal participated under a false name in the auction of house conducted by the Incometax Department and became the successful bidder and at the time when the sale was confirmed he denied that he ever made any bid at all, is guilty of the offence under Section 185, I.P.C.

276. Kishore Kumar was working as a Lecturer in S.R.M. Degree College. Pragnarani was also working as a Lecturer in S.R.M. Junior College and both the colleges were situated in the same premises. Both Kishore Kumar and Pragnarani were unmarried. The staff room for both the colleges was one and the same. They used to meet very often and used to discuss several topics. In course of time, their meeting turned into love and ultimately they married. For some time, they led a happy married life and one male child was born to them. After the birth of the male child, Kishore Kumar fell in love with one senior student, Premalatha and having fallen in love with her, started neglecting his wife and son. Differences arose between the two and his wife Pragnarani came to know of the love affair of her husband and she being a highly educated woman, could not tolerate the same. She complained the matter to her parents, who, in turn, reported the matter to the college Principal and other elders. The Principal and other mediators effected a mediation and ultimately they decided to give divorce and accordingly, a divorce deed was executed and it was attested by two elders. To have a legal sanctity to the divorce, the wife Pragnarani filed a divorce petition in a court and during the course of enquiry she produced the divorce deed executed between the couple. The court examined the scribe and one of the attestors in her favour who spoke about the execution of the said deed. The husband Kishore Kumar denied the divorce proceedings and contended that it was a forged one. He also examined the other attesor on his behalf who denied the execution of divorce deed and he even denied his signature on the divorce deed. He denied the whole transaction. Finally, the Court held that the divorce deed was correct and it was executed between the couple and was attested by the two attestors and the attesor who gave evidence on behalf of the husband denying his signature on the divorce deed was held to have given false evidence. Is he liable for any offence?

Under Section 191, I.P.C., whoever being legally bound by an oath or by an express provision of law to state the truth or



being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, is said to give false evidence and under Section 193, I.P.C., whoever intentionally gives false evidence in any stage of a judicial proceeding shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine. As the second attester who was examined on behalf of the husband has given false evidence, he is liable for punishment under Section 193, I.P.C.

277. Parankusam is the Sarpanch of Gopalapatnam village. He has bitter enmity with the ex-sarpanch Paranjyothi, whom he defeated in the panchayat elections. Though Paranjyothi was defeated, he comes in his way for doing any act in the Panchayat. So, Parankusam wanted to teach a lesson to Paranjyothi. He created a promissory note for Rs. 10,000/- as if it was executed by Paranjyothi in his favour with an ante-date and forged his signature and files a suit against him. During the course of trial, the signature contained on the promissory note is compared by the Handwriting Expert with his admitted signature and the Hand writing Expert says that the signature on the pronote does not tally with the admitted signature. Ultimately, the court dismisses the suit holding that it is a forged promissory note and that it was prepared only to lower down Paranjyothi in the public. Whether Parankusam is liable for any offence as he

prepared a false document?

Under Section 192, I.P.C., whoever causes any circumstance to exist or makes any false entry in any book or record or makes any document containing a false statement intending that such false entry or false statement may appear in evidence in a judicial proceeding is said to fabricate false evidence and under Section 193, I.P.C., whoever intentionally gives or fabricates false evidence is liable to be punished with imprisonment of either term which may extend to three years and shall also be liable to fine.

As Parankusam has made a false document with the intention that it may appear in evidence in a judicial proceeding he is said to have fabricated false evidence within the meaning of Section 192, I.P.C. and he is liable for punishment under Section 193, I.P.C.

278. Chandramouli studied B.A. and is in search of a suitable job. He belongs to Scheduled Caste. One day he sees one advertisement for the post of Junior Assistant in the Life Insurance Corporation and that post is reserved for Scheduled Tribe. He approaches the Mandal Revenue Officer for a certificate showing him as belonging to Scheduled Tribe. The Mandal Revenue Officer knows very well that he belongs to Scheduled Caste but not to Scheduled Tribe. The candidate somehow convinces the the M.R.O., and ultimately the M.R.O gives certificate stating that Chandramouli belongs to Schedule Tribe. Based on the said caste certificate, Chandramouli gets appointment. Subsequently it is discovered that it is a false certificate. Is the M.R.O. liable for giving false certificate?

Under Section 197, I.P.C., whoever issue or signs any certificate required by law to be given or signed or relating to any fact of which such certificate is false in any material point shall be punished in the same manner as if he gave false evidence, i.e., with imprisonment of either description which may extend to seven years and shall also be liable to fine. As the M.R.O. has issued false certificate knowing or believing that such certificate is false, he is liable for the above punishment.

Under Section 198, I.P.C, whoever corruptly uses any false certificate as a true certificate knowing the same to be false is also liable for punishment in the manner as if he gave false

evidence. So, Chandramouli who has obtained the false certificate and uses it for getting the job knowing the same to be false, he is also liable for the above punishment.

279. Purnachandra Rao married Anupama. After some time, differences arose between the couple and Anupama went to her parents' house and did not return. The husband also did not take steps to call her back. However, Purnachandra Rao developed intimacy with Anitha and they decided to marry. They went to the Registrar's Office and presented an application before the Registrar for their marriage. In the application Purnachandra Rao made a declaration that he was unmarried. The fact of his earlier marriage was not disclosed in that declaration. On coming to know that her husband had given an application for marriage, his wife, Anupama gave a complaint to the Registrar and on enquiry it was proved that Purnachandra Rao had made a false declaration. Is he liable for any offence?

Under Section 199, I.P.C., whoever, in any declaration made or subscribed by him, which declaration any court of Justice or any public servant or other person, is bound or authorised by law to receive as evidence of any fact, makes any statement which is false and which he either knows or believes to be false or does not believe to be true, touching any point material to the object for which the declaration is made or used, shall be punished in the same manner as if he gave false evidence. So, as Purnachandra Rao has given false declaration, knowing it to be false, he is liable for punishment under Section 193, I.P.C.

280. Premkumar was selected as a Revenue Divisional Officer and was posted in Chittoor District. After his selection he got married. He has one unmarried sister and also a widowed sister whom he had to maintain. His father died and the unmarried sister and widowed sister were with his mother at their native place and he used to send some money every month for their maintenance. After some time, Premkumar was blessed with a son. To look after the child, he called his widowed sister to his house. Subsequently, his mother and unmarried sister also joined him. While all of them were living jointly, his mother and widowed sister started torturing the girl in one way or the other. One day, during a quarrel in the house between the wife of Premkumar and his widowed sister the latter pressed the neck of

his wife as a result of which she died. Then, Premkumar came and understood the situation. He and his mother, and widowed sister created a story that his wife died of stomach pain. They cremated the body. The parents of the wife of Premkumar on coming to know about the death of their daughter became suspicious and gave a complaint to the police. The Police got exhumated the body of the deceased and sent it for postmortem examination. The doctor after conducting postmortem examination opined that the deceased died of asphyxia. Whether the Revenue Divisional Officer Premkumar, his mother and widowed sister are liable for any offence for causing disappearance of evidence of offence?

Under Section 201, I.P.C, whoever knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear with the intention of screening the offender from legal punishment, shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

As Premkumar, his mother and widowed sister have cremated the body of the wife of Premkumar who was killed by his widowed sister thereby causing to disappear the evidence of murder with the intention of screening the offender from legal punishment, they are liable for the above said punishment.

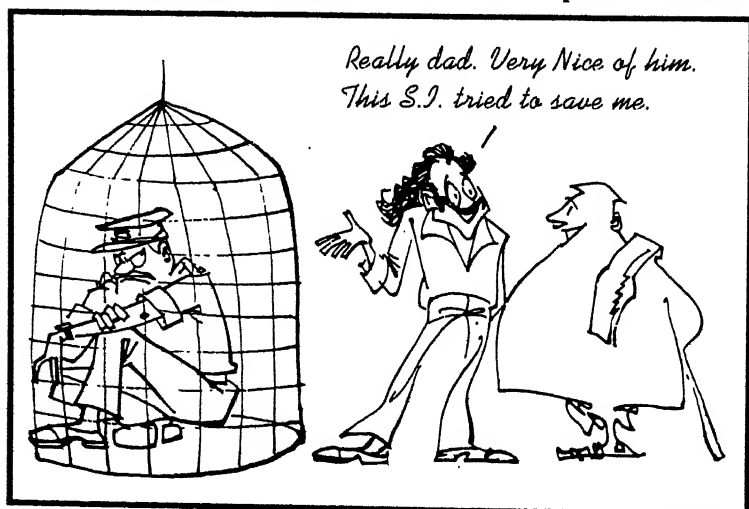
281. Gang rape was committed five persons on an unmarried scheduled tribe lady, by name Arundathi, as a result of which she died. It was brought to the notice of the Village Officer, who had to give a complaint to the police. Among the persons who committed the gang rape, the son of the Village Officer was also one. On coming to know that his son was also involved in the crime, the Village Officer reported to the police that the lady died due to snake bite. However, in the postmortem examination, it was revealed that she died of gang rape. Is the Village Officer liable for any offence for giving false information?

Under Section 202, I.P.C, whoever knowing or having reason to believe that an offence has been committed intentionally omits to give any information respecting that offence which he is legally bound to give, shall be punished with imprisonment of either description for a term which may extend to six months or with fine or with both. Under Section

203, I.P.C, whoever, knowing or having reason to believe that an offence has been committed, gives any information which he knows or believes to be false, shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both.

As the Village Officer, who is legally bound to inform the police about the death of the lady, gives false information, he is liable for punishment under the above sections of law.

282. There were feuds in Ramapuram, between the present Sarpanch and the Village Munsif. One day riots took place between the two groups and one person belonging to the group of Village Munsif, died. Immediately a report was given by the son of the deceased to the Sub-Inspector of Police, implicating the names of persons who were responsible for the death of his father. One of the assailants mentioned in the report, happened to be the son of a Minister. The Sub-Inspector of Police was influenced and yielding to the influence, he manipulated the record and prepared another report, eliminating the name of the son of the Minister and also mentioning false details about the overt acts attributed to several accused. After investigation, charge sheet was filed. During trial, the defacto complainant challenged the correctness of the report and stated that it was not the original report given by him. After the closure of the trial, it was held that the original report was destroyed and in its place another report was substituted. Is the Sub-Inspector of Police

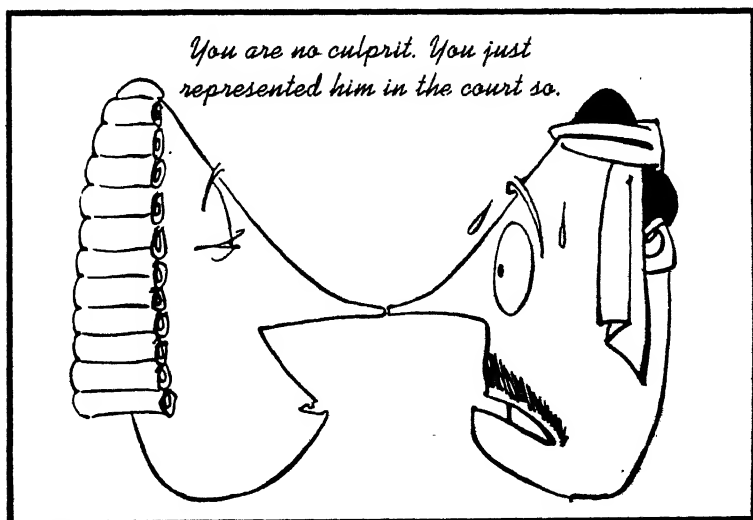


liable for destroying the original report given by the son of the deceased?

- * Under Section 204, I.P.C., whoever secretes or destroys and document which he may be lawfully compelled to produce as evidence in a court of justice or in any proceeding lawfully held before a public servant, shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both.

As the Sub-Inspector destroyed the original report and substituted in its place another report, he is liable for punishment under Section 204, I.P.C.

283. Abdul Saleem is a richman. He is providing funds to the son of his servant maid, Ibrahim for his education and so Ibrahim is very loyal to Abdul Saleem and he does any thing which is entrusted to him by Abdul Saleem. One day, Abdul Saleem is caught red handed in the house of one prostitute and a case is filed against him. He asks Ibrahim, the son of his maid servant to go to the court on his behalf and personating him and made an admission of the guilt and pay the fine imposed by the court. So saying, he gives some money. Accordingly, Ibrahim goes to the court and when the case is called, he appears in court personating himself to be Abdul Saleem and makes an admission of the guilt. The court doubts his personation and makes some enquiry and ultimately, it is found that he is not Abdul Saleem



and he is Ibrahim and that he falsely personated Abdul Saleem and made the admission. Is Ibrahim liable for any offence?

Under Section 205, I.P.C., whoever falsely personates another and in such assumed character makes any admission or confess judgment, shall be punished with imprisonment of either description for a term which may extend to three years or with fine or with both. As Ibrahim falsely personated Abdul Saleem, Ibrahim is liable for the above said offence.

284. Rajender was involved in a dacoity case. He was arrested by the police and when he was being taken to the Police Station, he was forcibly taken away by his followers from the custody of the police. However, after a week, the police could successfully re-arrest Rajender while he was hiding in a house of his friend. Is Rajender liable for any punishment for escaping from the lawful custody of the police?

Under Section 224, I.P.C., whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself for any offence with which he is charged or of which he has been convicted or escapes or attempts to escape from any custody in which he is lawfully detained for any such offence, shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both.

As Rajender escaped from the lawful custody of the Police while he was being taken to the police station after his arrest, he is liable for the above said punishment under Section 224, I.P.C.

285. Rameshwar was being tried along with his other companions for a dacoity case in a court. Trial was going on and almost all the witnesses were examined on behalf of the prosecution. The Investigating Officer, who happened to be the Sub-Inspector of Police, was in the witness box and giving evidence. Rameshwar apprehended that the case would end in his conviction. He took his chappals and threw one chappal at the Sub-Inspector and another chappal at the Presiding Officer. Whether Rameshwar has committed any offence for throwing chappals at the Presiding Officer?

Under Section 228, I.P.C., whoever, intentionally offers any insult, or causes any interruption to any public servant, while

such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both.

As Rajender has intentionally offered insult by throwing the chappal against the Presiding Officer and also caused interruption to the court work while the Presiding Officer is sitting in the judicial proceedings, he is liable for punishment under Section 228, I.P.C.

286. Hari Das Gupta was appointed in Government Mint. He was in charge of preparing coins. Within a short period, he proved to be one of the best workers in the mint and he was given merit certificate for his efficiency. After gaining a good image, he started stealing coins. One day he was caught red handed when he was taking out some coins. After enquiry he was removed from service. After his removal, he started making coins at his house with the skill and experience gained in the mint, started preparing counterfeit coins. Is Hari Das Gupta liable for any offence?



- * Under Section 232, I.P.C., whoever counterfeits or knowingly performs any part of the process of counterfeiting Indian coin, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years and shall also be liable for fine.

As Hari Das Gupta has counterfeited Indian Coin, he is liable for punishment under Section 232, I.P.C.

287. Latif Khan was a stamp vendor. He had contacts with a private agency who were preparing counterfeit stamps. He used to get counterfeit stamps and sell them to the villagers, who wanted to prepare some agreements generally not required to be produced in courts. While selling the stamps, he used to enquire the purpose for which the agreement stamp was required and if he was satisfied that the person concerned might not produce the same in Court, he used to give counterfeit Non-Judicial Stamp. In that process, he sold one counterfeit Non-Judicial Stamp worth Rs. 10/- to a villager for executing an agreement of sale. As the vendor who entered into an agreement with this vendee for sale of his property had subsequently resiled and refused to register the sale deed, the vendee, who purchased the stamp, filed a suit for specific performance based on the said agreement. During trial, it was discovered that it was a counterfeit stamp and ultimately, it was found that Latif Khan sold the counterfeit stamp to the vendee. Is the stamp vendor, Latif Khan liable for any offence?

* Under Section 258, I.P.C., whoever sells, or offers for sale any stamp which he knows or has reason to believe to be a counterfeit of any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine.

As Latif Khan is proved to have sold the counterfeit stamp to the vendee, he is liable for punishment under Section 258, I.P.C.

288. Ramayya Goud is a fair price shop dealer. He distributes essential communities like sugar, wheat, etc., to the ration card holders. He has to use weights as approved by the Weights & Measures Department. But the dealer gets weights of different denominations prepared resembling the original weights but with less weight. He starts using the same for weighing the essential commodities. One day, the Inspector of Weights & Measures Department inspects the weights used by the dealer and finds that they are false weights. Whether the dealer is liable for any punishment?

Under Section 266, I.P.C., whoever is in possession of any instrument for weighing or of any weight which he knows to be false, intending that the same maybe fraudulently used shall be punished with imprisonment of either description for a term which may extend to one year or with fine or with both. Under Section 264, I.P.C., whoever fraudulently uses any instrument for weighing which he knows to be false shall be punished with imprisonment of either description for a term which may extend to one year or with fine or with both.

As Ramayya Goud, the fair price shop dealer is in possession of false weights and as he fraudulently uses false weights, knowing them to be false, he is liable for punishment under Section 266 and also under Section 264, I.P.C.

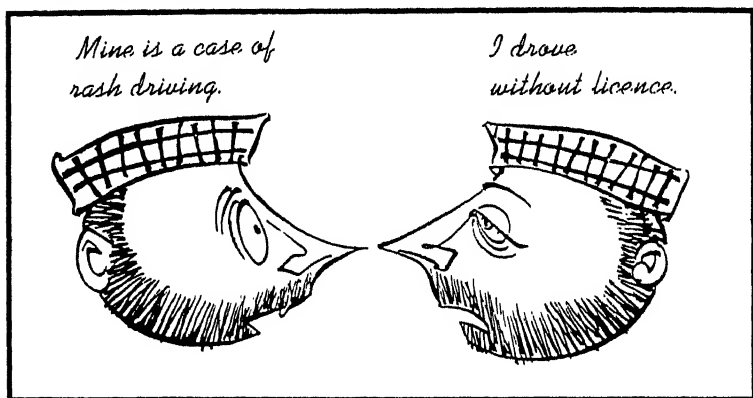
289. Amruthavalli is running a Beauty Clinic. But within the clinic, she is running a brothel house. She suffers from some communicable form of venereal disease. One day, a man comes and asks for a girl to be supplied. He specifically asks her to send a girl who is not having any communicable disease. As at that time no girl was available, she agrees to give company to him. She does not reveal the fact that she is suffering from communicable disease, which is likely to spread to others who have intercourse with her. Believing that Amruthavalli is hale and healthy, that man has sexual intercourse with her. Within a week thereafter, the disease is communicated to him and he is attacked with AIDS. Is Amruthavalli liable for any offence?

* Under Section 269, I.P.C., whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months or with fine or with both. As Amruthavalli, concealing the fact that she was suffering from a communicable form of disease likely to spread the infection which is dangerous to life, had sexual intercourse with that man, she is liable for punishment under Section 269, I.P.C.

290. Ramkumar is a young man of 25 years. He is a rash driver and drives his car at a breakneck speed. One day as usual he is driving the car rashly and negligently. The Assistant Commissioner of Police observes his driving and stops him and books a case for rash and negligent driving. Is Ramkumar liable

for any offence?

- * Under Section 279, I.P.C., whoever drives any vehicle or rides on any public way in a manner so rash or negligent manner as to endanger human life or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months or with fine which may extend to one thousand rupees or with both.



As Ramkumar was found to be driving his car on the public way, rashly and negligently, he is liable for punishment under the above said section.

291. Govinda Rao is the owner of a Maruthi Car. Rahim is working as a Driver under him since a long time and he is an experienced driver. Govinda Rao has a son, Surya Kumar he is aged 20 years. He learns driving the car from the Driver Rahim he has not obtained any learners driving licence. One day he drives the car independently on the public road rashly and negligently at a high speed and in that high speed he is not able to control the vehicle and gets involved in an accident. He hits two scooterists who are going in front of the car and they receive injuries. Is Surya Kumar who has driven the car rashly and negligently and caused injuries to two persons liable for any offence?

- * Under Section 279, I.P.C., whoever drives any vehicle on any public way in a manner so rash and negligent as to endanger human life or to be likely to cause hurt or injury to any other person shall be punished with imprisonment of either

description for a term which may extend to six months or with fine which may extend to one thousand rupees or with both. Under Section 190 of the Motor Vehicles Act, 1988, also such a person is liable for punishment. Under Section 337, I.P.C., whoever causes hurt to any person by doing any act so rashly or negligently as to endanger human life or the personal safety of others shall be punished with imprisonment of either description for a term which may extend to six months or with fine which may extend to five hundred rupees or with both. Under Section 181 of the Motor Vehicles Act, 1988, whoever drives a motor vehicle without a valid driving licence shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees or with both.

As Surya Kumar has driven the car without a valid driving licence, he is liable for punishment under Section 181 of the Motor Vehicles Act, 1988.

As he has driven the car on a public way so rashly and negligently as to endanger human life or to be likely to cause hurt and caused hurt to two persons, he shall be liable for punishment under section 337, I.P.C.

292. Abdul Hakim has an old building in Abids in Hyderabad city which is a busy commercial centre. On the eastern side of this building there is a big newly constructed building belonging to Manohar. On the back side, some portion of the newly constructed building of Manohar rests on the wall of the old building of Abdul Hakim. Abdul Hakim proposes to demolish the old building and construct a new building. Accordingly, he engages workers to demolish the building. They start demolishing the building. While demolishing the back side wall on which some portion of the newly constructed building of Manohar rests, falls down. Abdul Hakim did not caution the intimates of that house. While dismantling the wall in the back side, the wall fell into the portion of Manohar and two of his inmates received injuries. Is Abdul Hakim liable for any offence?

Under Section 288, I.P.C., whoever, in pulling down or repairing any building, knowingly or negligently omits to take such order with that building as is sufficient to guard against any probable danger to human life from the fall of that building or of any part thereof, shall be punished with

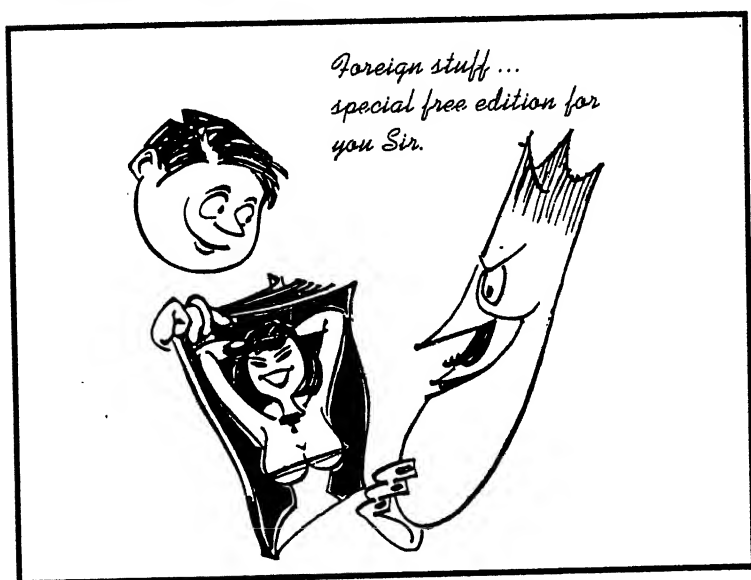
imprisonment of either description for a term which may extend to six months or with fine which may extend to one thousand rupees or with both. As Abdul Hakim while getting the wall pulled down, negligently omitted to take precautions and on account of his omission to take precautions, the wall fell into the house of Manohar and caused injuries to two of his inmates, Abdul Hakim, is liable for punishment under Section 288, I.P.C., for his negligent conduct with respect to pulling down the wall.

293. Ranjit has a pan shop in a busy locality at one corner in Chikkadapalli in Hyderabad city. In the pan shop, he sells several magazines and news papers. But after 7-00 P.M. he puts up pornographic books for sale and so after 7-00 P.M. there is heavy rush at that shop daily. The police could not understand the reason for the heavy rush at that pan shop. One day, they make a surprise check over that pan shop at about 8-00 P.M. and find Ranjit selling obscene books to the public. They also see him circulating pamphlets and paintings with obscene photos in advertisement of sex books, the police seize all the material from that pan shop, and arrest the pan shop owner, Ranjit. After completion of investigation charge sheet is filed against him. During the course of trial, he takes a defence that the photos which he sold are taken from the ancient monuments and temples. Is Ranjit, the pan shop owner liable for any punishment?

- * Under Section 292.I.P.C., whoever sells lets to hire, distributes, publicly exhibits or in any manner puts into circulation, or for purposes of sale, hire, distribution, public exhibition or circulation, makes produces or has in his possession any obscene book, pamphlet, paper, drawing, painting, representation or figure or any other obscene object whatsoever; or imports, exports or conveys and obscene object or takes part or receives profits from any such business or advertises or makes known by any means whatsoever or offers or attempts to do any act which is an offence under this Section, shall be punished on first conviction with imprisonment of either description for a term which may extend to two years and with fine which may extend to two thousand rupees, and, in the event of a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years and also with fine which may extend to five thousand rupees. However, this section

does not extend to any book, pamphlet, paper, writing, drawing, painting etc.. the publication of which is proved to be justified or which is kept or used bona fide for religious purpose and any representation sculptured, engraved, painted or otherwise represented on or in any ancient monument or any temple.

As Ranjit was found to have been selling and also letting to hire obscene books and also put pamphlets containing obscene pictures into circulation and also receives profits in such business, he is liable for punishment under Section 292, I.P.C.. However, in respect of pamphlets which are proved to represent any ancient monuments, he is exempt from punishment in that respect but in respect of other obscene books he is liable for punishment under this section.



294. At Srinivasa Nagar Colony in Hyderabad city several respectable families are residing. A lady named Radhabai, who is running a brothel house, shifts her business to this colony. She takes a house for rent and maintains girls using them for her business. Some of the girls whom Radhabai is maintaining are Priya, Rekha, Deepika, Ramba and Malini. All these girls commit obscene acts on the public road. They sit on the verandah of the house and sing obscene songs, causing annoyance to others. The residents of that locality give a complaint to the

police and the police make a surprise raid on that house and find the girls singing obscene songs and doing obscene acts. They book a case against them. Are the girls liable for any offence?

- * Under Section 294, I.P.C., whoever to the annoyance of others does any obscene act in any public place, or sings, recites or utters any obscene songs, ballad or words, in or near any public place, shall be punished with imprisonment of either description for a term which may extend to three months or with fine or with both.

As the girls are found to have been doing obscene acts and singing obscene songs to the annoyance of others, they are liable for punishment under Section 294, I.P.C.

295. A pasteur of the Church was running a nursery school and a charitable dispensary in a portion of the Church. There is a Hanuman temple opposite to the church. On Saturdays, because of the devotees visiting Hanuman temple and on Sundays, because of devotees visiting the church, that road becomes very busy causing public inconvenience. Vehicles and rickshaws and scooters are being parked on the road. The Pasteur was advised to shift the nursery school and hospital to some other place so that there may be some reduction in the traffic. But he turns a deaf ear. One day, the devotees of Hanuman temple went to the Church and with a view to demolish the Church. They destroyed the church property which was being used for offering prayers and insulted the Christian religion. Whether those devotees of Hanuman temple who caused destruction of Church property which is used for offering prayers, are liable for any offence?

- * Under Section 295, I.P.C., whoever destroys, damages or defiles any place of worship or any object held sacred by any class of persons with the intention of thereby insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider such destruction damage or defilement as an insult to their religion, shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both.

As the devotees of Hanuman temple have caused destruction of the Church property which is used for offering prayers and insulted the Christian religion, they are liable for punishment under Section 295, I.P.C.

296. Hanuman Saree Mandir was a partnership firm dealing in whole sale cloth business. Hanuman Prasad, Hari Prasad, Girija Prasad and Vishnu Diwakar were partners. The first three partners hailed from one family and the fourth partner was an outsider. The firm earned huge profits for the year 1992-1993 and differences arose between the partners regarding distribution of profits. One day, a meeting of the partners was held and in that meeting Vishnu Diwakar criticised for having appointed the son of Hanuman Prasad as a cashier in the firm, as according to him the cashier in the firm was embezzling some amounts or otherwise the firm would have earned some more profits. Thereupon, there was a heated exchange of words between Hanuman Prasad and Vishnu Diwakar. The so called cashier, who was the son of Hanuman Prasad was also present there at the meeting and he got hurt at the words of the partner Vishtnu Diwakar and he tried to shoot at Vishnu Diwakar who had criticised him and his father, but unfortunately his paternal uncle, Hari Prasad came in between him and the intended victim, and was killed. Is the cashier liable for any offence as he never intended to cause the death of his paternal uncle?

Under Section 299, I.P.C., whoever causes death by doing an act with the intention of causing death or with the intention of causing such bodily injury as is likely to cause death or with the knowledge that he is likely by such act to cause death commits the offence of culpable homicide and under Section 300, I.P.C., culpable homicide is murder if the act by which the death is caused is done with the intention of causing death or if it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused or if it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death or if the person committing the act knows that it is so imminently dangerous that it must, in all probability cause death or such bodily injury as is likely to cause death and commits such act without any excuse for incurring the risk of causing death or such injury. Under Section 301, I.P.C., if a person by doing anything which he intends or knows to be likely to cause death, commits culpable homicide by causing the death of any person, whose death he neither intends nor knows himself to be likely to cause the

culpable homicide committed by the offender is of the description of which it would have been if he had caused the death of the person, whose death he intended or knew himself to be likely to cause. Under Section 302, I.P.C., whoever commits murder shall be punished with death or imprisonment for life and shall also be liable to fine.

As the cashier, the son of Hanuman Prasad, intending to cause the death of Vishnu Diwakar, caused the death of Hari Prasad, whose death he neither intends nor know himself to be likely to cause, he is liable for the offence under Section 301 read with Section 302, I.P.C.

297. There is a Beggars' Union in a big city. Two beggars were allotted one big business area for begging. They were getting huge amounts daily. One day, a third beggar, who was allotted a colony which was a remote area in the city, encroached upon the business of the first two beggars. The two beggars, in charge of that area, objected to his encroachment. There was a big quarrel between the beggars. The third beggar had a broken hockey bat with him, which was being used by him for assistance to walk he being a lame man. During the course of that quarrel, the third beggar gave a blow with the bat on the head of the first beggar whereupon the first beggar fell down unconscious and died. After investigation a charge sheet was filed against the third beggar for an offence under Section 302, I.P.C., Is he liable for the said offence?

Under Section 299, I.P.C., whoever caused death by doing an act with the intention of causing death or with the intention of causing such bodily injury as is likely to cause death or with the knowledge that he is likely to cause death or with the knowledge that he is likely by such act to cause death commits the offence of culpable homicide. Under Section 300, I.P.C., culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death or if it is done with the intention of causing death or if it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused or if it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death or if the person committing the act knows that it is so imminently dangerous that it must, in all probability

cause death or such bodily injury as is likely to cause death and commits such act without any excuse for incurring the risk of causing death or such injury. Under Section 302, I.P.C., whoever commits murder shall be punished with death or imprisonment for life and shall also be liable to fine.

In the above case, as the third beggar has committed the murder of the first beggar, with the knowledge that it is likely to cause death but without any intention to cause or to cause such bodily injury as is likely to cause death, he is liable for the punishment under Section 304 Part II, I.P.C., and he can be punished with imprisonment of either description for a term which may extend to ten years or with fine or with both.

298. Durga Prasad married Srilatha and they had two children. Durga Prasad is aged about 45 years and his wife is aged about 25 years. She could not satisfy herself with her husband in the sexual intercourse. Her sister's husband, who was young and handsome, was coming to their house now and then. Srilatha developed intimacy with that man. One day, a function took place in their house and the sister of Srilatha and her husband came to their house for that function. That night, Durga Prasad and his wife Srilatha were sleeping in one room and as Srilatha's sister was having her periods, she slept on a verandah and her husband was sleeping in a separate room. During midnight, Srilatha woke up and went into the room of her sister's husband and bolted the door from inside, and she had sexual intercourse with her sister's husband. The moment Srilatha woke up and was going towards the room of her sister's husband, Durga Prasad also woke up and observed what his wife was doing. After she entered into the room of her sister's husband, Durga Prasad also followed her and peeped through a chink in the door, saw Srilatha and her sister's husband engaged in sexual intercourse. Durga Prasad immediately returned to his room, unnoticed by his wife, and laid on the cot and pretended to be sleeping. After some time, his wife came and slept by his side. After she slept, Durga Prasad stabbed her several times with a knife and his wife died. Whether any offence is committed by Durga Prasad and if so what is the offence committed by him?

* Durga Prasad, in a grave and sudden provocation, caused the death of his wife. Whoever commits culpable homicide not amounting to murder, shall be punished under Section 304 Part I, I.P.C., with imprisonment for life or imprisonment of

either description for a term which may extend to ten years and shall also be liable to fine if the act by which the death is caused is done with the intention of causing death or causing such bodily injury as is likely to cause death.

As Durga Prasad stabbed his wife in a grave and sudden provocation on seeing her having intercourse with her sister's husband, he is liable for the offence under Section 304 Part 1, I.P.C.

299. On account of business rivalry, there were differences between Narayana Singh and Nalini Kumar. Narayana Singh does transport business and was having two lorries. As the differences between the two reached to a peak, Narayana Singh decided to do away with the life of Nalini Kumar. Narayana Singh engaged his lorry driver, Jagpal and asked him to kill Nalini Kumar by dashing his lorry against him giving a colour that on account of rash and negligent driving accident occurred and if in that Nalini Kumar died, Jaspal would get good money and also employment to his son during the period in which he would be in jail which according to them might be less than two years as it was the maximum sentence under Section 304-A, I.P.C., According to the plan, Jagpal followed Nalini Kumar and at a lonely place he dashed the scooter on which Nalini Kumar was going and he died on the spot. In view of the strained relationship between the master of the driver and the deceased Nalini Kumar, the police filed a charge sheet for an offence under Section 302, I.P.C., against the driver Jagpal.

Jagpal contended that it was only on account of rash and negligent driving the accident occurred but he had no intention to cause the death of Nalini Kumar. Is Jagpal liable for the offence under Section 302 or for the offence under Section 304-A, I.P.C.?

* For convicting the accused under Section 304-A, I.P.C., death should have been the direct result of a rash and negligent act of the accused. But in the above case there is a concerted pre-plan to kill Nalini Kumar and with that pre-plan, Jagpal hit the lorry against the deceased, Nalini Kumar and caused his death. He drove the vehicle only with the intention of killing Nalini Kumar. So, he is liable for the offence under Section 302, I.P.C., but not for the offence under Section 304-A, I.P.C.

300. There is Kalpana Nursing Home. It is a big hospital. Medicines are also being given in the hospital as per the prescriptions of the doctors. One patient approaches a Cardiologist in that Nursing home, complaining that he is often getting chest pain. The doctor examines him and after conducting tests, prescribes some medicines and asks him to take them from the compounder. The patient goes to the compounder. At that time, the compounder is chitchatting with the nurses and without properly reading the prescription, gives some poisonous medicines by mistake, as the medicines prescribed by the doctor and the poisonous medicines are kept side by side. The patient immediately uses the medicines given by the compounder. After some time, the patient suffers from severe heart attack and dies. Thereafter, the doctor sees the remaining medicine in the bottle and finds it to be poisonous medicines which are not prescribed by him. Whether the compounder is liable for any offence?

* Under Section 304-A, I.P.C., whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both.



As the compounder has given wrong medicines without properly reading the label on the bottle, he is guilty of rash

and negligent act, and so he is liable for the offence under Section 304-A, I.P.C.

301. Vikranth studied B.E. and after his education he was appointed as an Assistant Engineer in E.C.I.L. Sailaja, an unmarried young girl was also working in the same company and she was working directly under him. In course of time they fell in love and got married. This was not to the liking of the mother of Vikranth. She was expecting more dowry from the bride. Though the parents of Sailaja also did not like the marriage in the beginning, as the marriage was to the liking of their daughter, they did not have any objection. They gave nominal dowry according to their capability. The mother of Vikranth was not satisfied with the dowry Sailaja brought. She always used to demand Sailaja to bring more dowry. She used to point out that if his son was given in marriage to any other lady, he would have got more than one lakh rupees as dowry. Vikranth had to depend upon his and his wife's salary for their maintenance and they had no other source of income. Whenever Vikranth felt need for more money, or expressed want of any luxurious articles, his mother used to say that as he had married a poor lady how could expect all and if he had married a daughter of rich man, he would have got more dowry, T.V., Scooter, etc. In course of time, he also felt what his mother was telling is correct. Then he also started asking his wife to bring more dowry. The mother and son used to illtreat Sailaja. One day the mother of Vikranth told him that if his wife Sailaja died, there was a match readily available who were offering a dowry of Rs. 1 lakh. He also felt that it was a good idea and one day, Vikranth and his mother poured kerosene on Sailaja and lit fire and Sailaja died of burns. She died within three years of her marriage. On coming to know about the death of their daughter, the parents of Sailaja came and suspecting the death of their daughter to be an unnatural one, gave a complaint. Whether Vikranth and his mother are liable for any offence?

Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for or in connection with any demand for dowry, under sub-section (1) of Section 304-B, I.P.C., such death shall be called "dowry death" and such husband or relative shall be deemed to have caused her

death and under sub-section (2) of Section 304-B, I.P.C., whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.

As the death of Sailaja was caused by her husband, Vikranth and his mother by pouring kerosene on her and lighting fire within seven years of her marriage and as it is proved that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for or in connection with demand for dowry, both Vikranth and his mother are liable for the offence under Section 304-B, I.P.C.

302. Shankar studied M.Com. As he did not get any job, he opened a book-library. Several persons, mostly ladies used to come to his library, select books and take them on rent. Madhavi, who completed her B.A., was also visiting the library and taking books on rent. She became a regular customer. Whenever she came to the library, Shankar used to pay special attention to her and she also used to enjoy talking to him. Gradually they fell in love with each other, which ultimately led to their marriage. This marriage was not to the liking of the mother of Shankar. She expected more dowry from the bride. After marriage, the mother of Shankar used to point out to her daughter-in-law that she did not bring any dowry nor any articles and that several persons were ready to give more dowry to her son. Within one year of the marriage, Shankar was selected as a Commercial Tax Officer and he was posted as a Deputy Commercial Tax Officer. Since the appointment of her son as a Deputy Commercial Tax Officer, his mother used to torment her and used to say that if she could not bring dowry from her parents, it was better for her to die. The mother used to weave some stories against Madhavi to her son. Though in the beginning he did not believe them, in course of time he too started believing the stories and started harassing and illtreating his wife, and encouraged her to die. As Madhavi's parents were poor and if she had gone back to her parents' house it would have been a burden to them and they would also be put to mental worry, she thought of committing suicide. Accordingly, she poured kerosene on her body and threw away the tin on the floor. On hearing the sound of the tin, both the mother and son came to the door and saw from the door, Madhavi setting fire to herself. They did not come to her rescue and did not even try to

put out the flames and they were happy. Madhavi died on account of burns. Whether the attitude of Shankar and his mother which led to the committing of suicide by Madhavi, amounts to abetment of suicide, punishable under Section 306, I.P.C.?

Under Section 306, I.P.C., if any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

As Madhavi committed suicide on account of the abetment caused by her husband, Shankar and her mother-in-law, Shankar and his mother are liable for the offence under Section 306, I.P.C.

303. Chandrayya was working as a Mason. He had his wife Rukkamma, two sons and one daughter. Chandrayya was addicted to vices and he used to spend his earnings for drinking and he was not giving any money to his wife for household necessities. As her husband was not properly giving money for the maintenance of the family, Rukkamma was working as a servant maid. Chandrayya also kept one concubine and he used to give his earnings to her and he did not give even a single pie to his wife and so she was experiencing great difficulty to maintain the family. Whenever she asked him to mend himself and give his earnings for the maintenance of the family, Chandrayya used to beat her mercilessly. Rukkamma could not provide even one meal a day to her children. In addition to the hungry situation, Chandrayya used to come to the house late in the night, fully drunk and used to beat her. She could not tolerate the situation in the house on account of not providing even a single meal to her children and also on account of the ill-treatment by her husband, Rukkamma decided to commit suicide and one day she fell in a well. When she jumped into the well, the passers-by saw her in the well and one person who knew swimming, jumped into the well and in the meantime the villagers gathered there and threw a coconut rope into the well and with the help of that rope that person took out the lady and saved her. On coming to know about this, police came there and after investigation, they filed a charge sheet against the lady. Has Rukkamma committed any offence?

Under Section 309, I.P.C., whoever attempts to commit suicide and does any act towards the commission of such

offence shall be punished with simple imprisonment for a term which may extend to one year or with fine or with both.

As Rukkamma has attempted to committed suicide by falling into the well and but for the timely jumping of a passer-by and saving her, she would have died, she is liable for punishment under Section 309, I.P.C.

304. Smruthi is studying M.B.B.S. in a Medical College. She is doing house surgeon. She is attending the hospital. She is attached to a Surgeon. One day she is asked to come for night duty. While she is on duty, Dr Rajender, who is also on night duty, after completing his night rounds comes to the staff room. Both chitchat for sometime and they turn the topics to some English cinemas. Their conversation reaches the stage of having sexual intercourse. Subsequently, Smruthi becomes pregnant and gives birth to a female child. She has to return to her native place as the period of house-surgeon is completed. If she goes along with the child, everyone in the native place will abuse her and the respect of her parents will also be lowered down in the society, she thinks of burying the child secretly. Accordingly, one day she takes the child to the outskirts of the city and secretly buries it. While she is returning, the police who are on night rounds suspect her movements and detain her and interrogate her. Finally the police come to know the truth. Whether Smruthi has committed any offence?

- * Under Section 318, I.P.C., whoever, by secretly burying or otherwise disposing of the dead body of a child, whether such child die before or after or during its birth, intentionally conceals or endeavours to conceal the birth of such child, shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both.

As Smruthi has secretly buried her child immediately after its birth, intentionally concealing the birth of that child, she is liable for punishment under Section 318, I.P.C.

305. Murthy has a big mango garden. He appoints a watchman, Somayya to guard the mango garden. One day, mangoes are plucked and heaped for being filled up in baskets. As it is too late in the night, he thinks of doing that work on the next day. He asks the watchman to carefully watch the mangoes during night.

During night, some thieves takes away the mangoes. On the next morning, Murthy comes to the garden and having found that the mangoes are stolen, finds fault with the watchman and in an angry mood he kicks him for not watching the mangoes properly. Somayya, the watchman has an already enlarged spleen and it is not known to Murthy. He kicks the watchman on his stomach and the watchman dies. Is Murthy liable for any offence if so for what offence?

- * Murthy did not know that the watchman was having enlarged spleen in his stomach. Only in a fit of anger he kicked the watchman on his stomach. He had no intention to kill him. Kicking will cause only pain and tenderness at the most leaving some swelling. At the most it is a simple hurt. Under Section 323, I.P.C., whoever, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year or with fine which may extend to one thousand rupees or with both. The act committed by Murthy will come under this section and he is liable for punishment under Section 323, I.P.C.

306. Gangulu and his associates had specialised themselves in committing thefts by administering stupefying drugs to the inmates of the houses. One day they went to the house of a rich man, Koteswara Rao. At that time, Koteswara Rao was not in the house but his wife and young children were there in the house. Gangulu and his associates dressed themselves as Sadhus and went to that house. They gave details of the family history giving an indication to the innocent ladies that they could tell past, present and future events. At that time, the wife of Koteswara Rao was alone in the house. In the process of telling future events, the Sadhus gave some Vibhudhi powder to the wife of Koteswara Rao asking her to swallow it so that she would have good fortune. As the family of Koteswara Rao was in troubles, his wife innocently believed that by taking that power they might have good days. Accordingly the wife of Koteswara Rao took the powder mixed with water and within five minutes, she became unconscious. Immediately, Gangulu and his followers went into the house and removed all the valuable gold ornaments of the wife of Koteswara Rao and escaped from the house. After some time, she regained consciousness and found the ornaments on her body missing and also cash and gold ornaments in the almyrah missing. In the meantime, her husband came and she

told everything to him, who gave a report to the police. After investigation, the police arrested Gangulu and his associates and filed a charge sheet. What is the offence committed by them?

Under Section 328, I.P.C., whoever administers stupefying or intoxicating drug with intent to cause hurt to such person or with intent to commit or to facilitate the commission of an offence, shall be liable for punishment with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine. Under Section 380, I.P.C., whoever commits theft in any building, which is used as a human dwelling, shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine.

As Gangulu and his associates administered some Vibhudhi, a stupefying powder to the wife of Koteswara Rao to facilitate the commission of theft in their dwelling and committed theft of gold, cash and other valuables from that dwelling, they are liable for the offences under Section 328 and 380, I.P.C.

307. Ravinder, a boy aged about 20 years was married to Malini, a girl aged about 13 years. Malini had just attained puberty. As they were young, their respective parents postponed the nuptial marriage. However, the girl was left at the house of her husband. One day the parents of Ravinder went to a neighbouring village, leaving Ravinder and his wife alone. Ravinder had sexual intercourse with his wife. As she was too young and could not withstand the intercourse, she sustained injuries and died. Whether Ravinder committed any offence and if so what is the offence committed by him?

- * Under Section 338, I.P.C., whoever causes grievous hurt to any person by doing any act so rashly or negligently as to endanger human life shall be punished with imprisonment of either description for a term which may extend to two years or with fine which may extend to one thousand rupees or with both.

As Ravinder had sexual intercourse with his wife, who is 13 years and who has just attained puberty and as she died because of the injuries thereof, it can be held that Ravinder was guilty of causing grievous hurt by doing a rash act and so he can be convicted under Section 328, I.P.C.

Further, under clause (6) of Section 375, I.P.C., a man is said to commit rape who has sexual intercourse with a woman with or without her consent when she is under sixteen years of age and such woman raped is his own wife and is not under twelve years of age, shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both. So, as Ravinder had sexual intercourse and thereby is said to have committed rape, with his wife who is aged 13 years he is further liable for punishment under Section 376 (1) , I.P.C.

308. Kondayya has Ac. 5-00 of dry land. In between the said land there is a public cart track and since times immemorial it is being recognized as a public cart track. He has raised groundnut crop in the entire land and the crop was ripe for plucking. One day, Ramayya comes on his double bullock cart through that cart track to reach his village. Kondayya voluntarily obstructed Ramayya from proceeding further saying that his crop will be spoiled if he takes the double bullock cart in that way. Whether Kondayya has committed any offence?

- * Under Section 339, I.P.C., whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed is said wrongfully to restrain that person and under Section 341, I.P.C., whoever wrongfully restrains any person shall be punished with simple imprisonment of either description for a term which may extend to one month or with fine which may extend to five hundred rupees or with both. As Kondayya has voluntarily obstructed Ramayya from proceeding from the cart track, he is said to have committed the offence of wrongful restraint and he is liable for punishment under Section 341, I.P.C.

309. Priyanka was admitted in the first year of MBBS Course in a Medical College. Senior Students ragged her. Out of those students, Suneel, a student of third year MBBS, along with his friends stopped her while she was going alone after college hours and tried to open the string of her salwar with a view to commit rape on her but Priyanka resisted and raised cries, which attracted several other students and Suneel and his associates fled. After completing investigation, the police filed a charge sheet against Suneel for an offence under Section 376 read with Section 511,

I.P.C. Is he liable for punishment under those sections?

The action attempted by Suneel did not show a determination to have sexual intercourse at all. Under Section 354, I.P.C., whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both. As the act of opening the string of the salwar of Priyanka by Suneel would amount to committing assault or use of criminal force to her intending to outrage her modesty, he is liable for the offence under Section 354, I.P.C., but not under Section 376 r/w. 511, I.P.C.



310. Aravind married Sumitra and they were living happily. While so, Aravind fell in love with another lady Jyotsna. He purchased one house in her name also and started living with her. Two children, one son and one daughter were born through her. When the boy was studying SSC and the girl was studying Inter-II year, they being 15 years and 17 years of age respectively, differences arose between Aravind and his concubine, Jyotsna. As Aravind felt that it was not safe to keep the children with Jyotsna, he took away the two children with him. Jyotsna gave a complaint to the police against her husband stating that her two

children were taken away by her husband from her custody. The police filed a charge sheet against Aravind under Section 363, I.P.C., Is he liable for the said offence?

- * Under Section 361, I.P.C., whoever takes or entices any minor under sixteen years of age if a male or under eighteen years of age if a female out of the keeping of the lawful guardian of such minor, without the consent of such guardian, is said to kidnap such minor from lawful guardianship and under Section 363, I.P.C., whoever kidnaps any person from lawful guardianship shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine.

The son of Aravind is aged 15 years and his daughter is aged 17 years, and they are the illegitimate children. In the case of illegitimate children, the mother is the lawful guardian. If the father of the minors takes away the minors without the consent of the mother, such taking away amounts to kidnapping from the lawful guardianship. So Aravind is liable for punishment under Section 363, I.P.C.

311. Dawood is maintaining a training school for the beggars for soliciting or receiving alms in a public place under the pretence of singing, dancing, fortune-telling, performing tricks etc. After giving such training, he used to sell them to gangs in big cities like Madras, Calcutta, Bombay, etc. He also used to purchase minor children from different places. The sub-agents used to take away the school going boys/girls and sell them to Dawood. One day Dawood and his associates kidnap five children while returning from a convent for giving them training as beggars. On the complaints received from the parents of those children, the police make investigation and trace the children from Dawood. A charge sheet is filed against Dawood and his associates under Section 363-A, I.P.C. Whether Dawood and his associates are liable for the said offence?

As Dawood and his associates are proved to have kidnapped the five children for using them for the purposes of begging, they are liable for punishment under Section 363-A (1), I.P.C., according to which, whoever kidnaps any minor or, not being the lawful guardian of a minor, obtains the custody of the minor, in order that such minor may be employed or used for the purposes of begging shall be punishable with

imprisonment of either description for a term which may extend to ten years and shall also be liable to fine. So, Dawood and his associates are liable for punishment under Section 363-A (1), I.P.C.

312. Kalpana and Kalavathi are two sisters. They are aged 17 years and 19 years respectively. Kalpana is studying B.A. first year and Kalavathi is studying B.Com III year. Balakrishna and Santharam are two friends and they are studying final year B.Com. These two boys develop a liking for the two sisters. They make several attempts to attract them but these two girls do not yield to their attempts. The two boys feel ashamed among their friends and their friends start commenting that they are not even able to touch the air breathed by the two girls. Balakrishna and Santharam take a vow that they will marry these girls, or seduce them for illicit intercourse. They hatch up a plan. They talk to a Purohit asking him to come to a nearby temple on a particular day at a particular time to celebrate the marriages. They make all arrangements for performing the marriages. They engaged goondas and while the two ladies are returning from the college, the two boys with the assistance of the goondas waylay and kidnap them with intent to compel them to marry them against their will. Balakrishna abducts Kalavathi for marrying her against her will while Santharam kidnaps Kalpana in order to seduce her to illicit intercourse. On informaton, the parents of the girls bring police to the temple and they rescue the girls and arrest both Balakrishna and Santharam. Whether Balakrishna and Santharam are liable for any offence?

Under Section 366, I.P.C., whoever kidnaps or abducts any woman with intent that she may be compelled or knowing it to be likely that she will be compelled to marry any person against her will or in order that she may be forced or seduced to illicit intercourse shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

As Balakrishna abducted Kalavathi, who is aged 19 years, with intent that she may be compelled to marry him against her will and as Santharam kidnapped Kalpana, aged 17 years in order that she may be forced/seduced to illicit intercourse, both are liable under Section 366, I.P.C.

313. Savitri, a noted prostitute has a daughter Sivamani, aged

15 years. Savitri induces her daughter Sivamani, who is under the age of 18 years (she being aged 15 years), to go from one place to another with the customers with intent that girl may be forced or seduced to illicit intercourse with another person. Is Savitri liable for any offence?

Under Section 366-A, I.P.C., whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years and shall also be liable to fine.

As Savitri has induced her minor daughter to go from one place to another to do an act with intent that she may be forced or seduced to illicit intercourse, Savitri is liable for the above said offence under Sec. 366-A, I.P.C.

314. Macrea, a French lady came to India and settled in Kashmir. She had one daughter, aged 19 years and she was studying degree in Kashmir. One tourist came to Macrea and requested her to send her daughter along with him to Delhi for having sexual intercourse with her and he offered huge amount to Macrea. Macrea agreed for that and she received the amount offered by the tourist and asked her daughter to go along with that man to Delhi with intent that she might be seduced to illicit intercourse with that person. The husband of Macrea, who had differences with her, came to India and came to know that she sent his daughter with a tourist for illicit intercourse, gave a complaint to the police and the police traced the girl and filed a complaint against her mother, Macrea. Has Macrea committed any offence and if so what is that offence?

Under Section 366-B, I.P.C., whoever imports into India from any country outside India or from the state of Jammu and Kashmir, any girl under the age of twenty one years with intent that she may be or knowing it to be likely that she will be, forced or seduced to illicit intercourse with another person, shall be punishable with imprisonment which may extend to ten years and shall also be liable to fine.

As Macrea has sent her daughter from Kashmir to Delhi who is under the age of twenty one years, with intent that she may be seduced to illicit intercourse with the tourist, Macrea is

liable for punishment under Section 366-B, I.P.C.

315. Surekha Begum took her minor daughter, Gulnaz, aged about 8 years, to a marriage. Surekha Begum put a gold chain on Gulnaz, and also gold bangles to her hands. Some habitual offenders came to the marriage function for committing theft of gold ornaments. Out of the thieves, Deekshit found the gold chain and bangles adorned by the girl, Gulnaz and he called her by offering sweets. He took her outside the function hall and took her to a far off park and removed the gold jewels and fled away. The mother of that girl having found that the gold jewels were missing on the body of her daughter, gave a police complaint. During the investigation, the police arrested Deekshit and his associates and recovered the stolen gold jewels. Is Deekshit liable for any offence and if so what is the offence committed by him?

- * Under Section 369, I.P.C., whoever kidnaps or abducts any child under the age of ten years with the intention of taking dishonestly any moveable property from the person of such child, shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine.

As Deekshit has kidnapped Gulnaz, a girl under the age of 10 years with the intention of taking dishonestly the gold jewels from her person, he is liable for punishment under Section 369, I.P.C.

316. Pradeep Kumar and his wife Mahalakshmi went on a pilgrimage to north India and they also visited Kashmir. There they found one person selling a girl, aged 9 years, in public shandy. On enquiry, they came to know that his name was Kazem Ali, and the name of the girl was Rameswari. As the girl appeared to be a Telugu speaking girl and as there were no one in their house to do the house hold work, Pradeep Kumar thought of purchasing that girl from Kazem Ali and accordingly, the couple bargained with that man and ultimately purchased that girl for Rs. 5,000/- and brought that girl along with them to their native place. The girl, Rameswari was working as a servant maid in their house but they were not giving any wages to her nor was she allowed to leave the house as they had purchased her after paying huge amount. After three years, at last the girl could successfully escape from the custody of Pradeep Kumar and his

wife and took shelter in a police station where the Sub-Inspector of police recorded her statement and booked a case against Pradeep Kumar, who purchased the girl and also Kazem Ali, who sold the girl. Whether both are liable for any offence?

Under Section 370, I.P.C., whoever imports, exports, removes, buys, sells or disposes of any person as a slave, or accepts, receives or detains against his will any person as a slave, shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine.

As Pradeep Kumar bought the girl for the purpose of utilising her services as a slave in his house and Kazem Ali sold the girl to Pradeep Kumar for the said purpose, both Pradeep Kumar and also Kazem Ali are liable for the offence under Section 370, I.P.C.

317. Durgabai is a very influential lady in Hyderabad city. She participates in several social organisations. She herself is maintaining one orphanage wherein she is maintaining several destitute children. Though she does all the social activities to the knowledge of the public, she is also doing some backdoor business and earning a lot of black money. One lady from Rajasthan comes to Durgabai and asks her to sell some minor girls to her so that she can utilise them for the purpose of prostitution and offered Rs. 50,000/- to her for selling 10 minor girls. Durgabai tempted by the huge amount offered by the Rajasthan lady hands over the minor girls to the lady. One of the girls in that orphanage runs to the Police Station and informs the Sub-Inspector that Durgabai is selling the girls from the orphanage to a Rajasthan lady and that Rajasthan lady is about to take the girls sold to her. Thereupon, the Sub-Inspector of Police along with his staff raids the house of Durgabai where they find Durgabai handing over ten girls to that Rajasthan lady after having sold them for the purpose of prostitution. They booked a case against Durgabai and the Rajasthan lady. Whether they have committed any offence?

Under Section 372, I.P.C., whoever sells, lets to hire or otherwise disposes of any person under the age of eighteen years, with intent that such person shall at any stage be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral

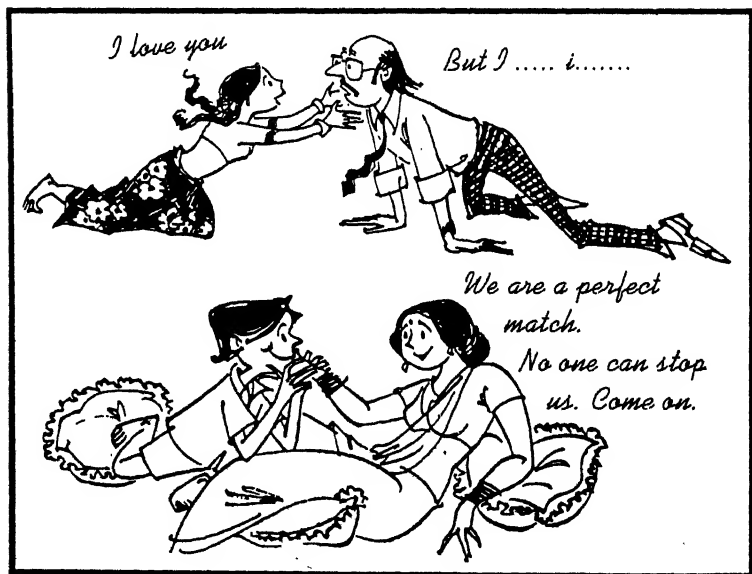
purpose or knowing it to be likely that such person will at any stage be employed or used for any such purpose shall be punished with imprisonment of either description for a term which may extend to ten years and shall also liable to fine.

As Durgabai has sold minor girls to the Rajasthan lady by receiving Rs. 50,000/-, for the purpose of using those minor girls for prostitution, she is liable for the offence under Section 372, I.P.C. Under Section 373, I.P.C., whoever buys, hires or otherwise obtains possession of any person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose or knowing it to be likely that such person will at any age be employed or used for any such purpose shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

So, the Rajasthan lady, who purchased the minor girls from Durgabai with intent that they may be employed for the purposes of prostitution, is also liable for the offence under Section 373, I.P.C.

318. Varudhini, aged about 25 years and unmarried, was working as a Teacher in Little Birds High School, situated in Vijayanagar Colony in Hyderabad. She was a good lady and her ambition was to marry a good man. However, as she was young and beautiful, many men made advances towards her, but she did not care them. One day, at about 4.00 P.M. she went to the Toilet in the High School. Unexpectedly, she found in that toilet one boy, Gopi adjusting the zip of his pant after passing urine. She accidentally happened to see the penis (male organ) of the boy which was of an abnormal size. She forgot herself and kissed that boy and came out. Gopi was also a resident of the same colony in which Varudhini was residing. From that day onwards she used to call him and talk to him and ask him about his studies and she also asked him to come to her whenever there was any doubt in any subject. One day that boy asked the teacher, Varudhini to explain one problem in Maths. He asked her to explain the problem in the High School. But Varudhini asked the boy to come to her house at about 7.00 P.M., so that she would explain the problem. Accordingly, that boy went to her house at 7.00 P.M. Varudhini explained the problem for sometime and

thereafter saying that she would bring tea for him asked him to wait. She closed the doors and took that boy to the bed room and removed the clothes and had forcible sexual intercourse with the boy. As it was the first time for both to have sexual intercourse, some minor injuries were also caused to their private parts. The boy went home after that. The parents of the boy found some blood stains on his pant and insisted him to tell what had happened. At last the boy told his parents what had happened. Then the father of the boy took him to Swapna Nursing home for treatment. To the same nursing home Varudhini also came for treatment. The doctors examined the boy and the lady doctor examined the teacher. As the doctors came to the conclusion that rape was committed, and as it was a medico-legal case, they reported the matter to the police as it was their duty to report to the police. The parents of the boy as well as the Teacher came to know of the report given by the doctors. Then the father of the boy as well as the teacher approached the Sub-Inspector of Police to drop further action on the report made by the doctors as it related to the reputation of both the families. What would be the effect?



* No where in Section 375, I.P.C., it is mentioned that if a woman commits rape on a man, it is an offence. In the entire Section 375, I.P.C., and also in the punishing section 376,

I.P.C., the word 'man' is referred to saying that a man is said to have committed rape who has sexual intercourse with a woman. In the above case, invitation has come from the woman and she herself had intercourse with the boy. Therefore, the Sub-Inspector can refer the case as mistake of law and close the case and drop further action.

319. Narender, a young boy, aged about 23 years, was residing in a room, which was opposite to the house of Rameswar, who was working as an Engineer in Public Works Department. The Engineer was always on outdoor duty on his official work. Some times, he used to stay for three or four days continuously during his camps. Narender used to watch all this. The Engineer had a son, aged 3 years. In the absence of the Engineer, his wife and son used to stay alone. Narender had an eye on the wife of the Engineer and was waiting for an opportunity. One day, in the absence of the Engineer, Narender entered into his house and had a talk with the wife of the Engineer and ultimately asked her to sleep with him. But she refused and asked him to get out of the house. Then Narender having decided to have intercourse with her at any cost, threatened her that he will kill her son aged 3 years if she does not submit herself for intercourse. He also pointed out a knife at her son. For the fear that her son might get killed, she submitted herself to Narender. After the arrival of her husband, she narrated the entire story to him who gave a report to the police. A case was registered. Has Narender committed any offence, if so, what is it?

- * As the individual, Narender had sexual intercourse with the wife of the Engineer, the act committed by Narender is an offence punishable under Section 376, I.P.C., as the consent was obtained by putting her in fear of death of her son.

320. Vani, a village lady, aged about 20 years, fell in love with Venu. As they were residing in a small village, it was not possible for them to meet frequently and to satisfy their lust. However, they used to meet during night. Vani used to go out of the house on the pretext of answering calls of nature and used to meet him. They even went to the extent of having intercourse. It was a harvest season and people used to go for watching their crops during night. Gopal, another unmarried person of the same village, was going to his fields on one night and on the way, he found Vani and Venu in a compromising position in a field by the

side of a hay heap. Gopal raised cries stating that some persons are committing theft of his paddy crop. On hearing the cries, some neighbours gathered there and in the meantime, Venu escaped. On being questioned by the persons gathered there, Vani told them that Gopal committed rape on her. Thereupon, on the advice of the elders, she gave a complaint to the police and was examined by a Medical Officer. The doctor also opined that Vani was running her third month of her pregnancy. Gopal was also examined by the doctor and it was opined that Gopal is impotent. In the Court, Vani deposed that Gopal committed rape on her. Gopal has stated in his examination under Section 313, Cr.P.C. and also in his defence that as he happened to see two persons near a paddy heap, he mistook them to be thieves and so, he cried out. Vani feared that he may reveal the illicit connections with Venu, and so she put the entire blame on him. Gopal pleaded innocence. As the case was going on in the court, Vani gave birth to a male child. Gopal filed a petition in the court for conducting Parentage (DNA - Genetal) test to determine the parentage of the child. After examining Gopal and Venu, the doctors opined that Venu is the father. Is the offence against Gopal proved?

- * As the doctor's evidence clearly established that Gopal is an impotent person and Vani is a pregnant lady and she became pregnant through another man, the court gave benefit of doubt to Gopal and acquitted him of the charge under Section 376, I.P.C.

321. Sunil, an unemployed and unmarried graduate was giving tuitions to the girl students for their S.S.C. examination. He was attracted towards by one girl student, Latha, aged 15 years. He was giving importance to her devoting more time by taking up extra classes to her alone. During the course of giving tuitions he used to talk to her about sex and seduced her into having an intercourse. On going back to her house, her mother observed her not walking properly and she also found blood stains on the clothes. On her enquiry, Latha narrated the entire story. Immediately she was taken to the doctor and was examined by the lady doctor. The clothes were also preserved. On examination, the lady doctor opined that rape has been committed on her and that the girl was virgo intacta upto the date of the occurrence. Thereupon, a complaint was given to the police who registered a case under Section 376, I.P.C.,

against Sunil. During investigation, Sunil was also examined by a doctor and found to be potent. Latha was a minor as on the date of the offence as she was aged only 15 years. Sunil pleaded in the court that Latha gave her consent for intercourse and that he did not force her. What is the position?

When the girl is under sixteen years of age, her giving consent or not giving consent is immaterial and the act committed by Sunil amounts to rape, as defined under Section 375, I.P.C., and is liable to be convicted under Section 376, I.P.C.

322. Sujatha, aged about 14 years was joined in a Social Welfare Hostel at Karimnagar and was studying X standard. Babu, the maternal uncle's son of Sujatha, aged about 23 years, was working at Karimnagar as Junior Assistant in Collector's Office. Taking advantage of the relationship with Sujatha, Babu used to visit the hostel frequently and meet Sujatha. As they both are stated to be relations, the Superintendent of the Hostel also did not object to their meeting often. Their meeting gradually led to the stage of having sexual intercourse. Babu was a married man. Sujatha became pregnant and ultimately gave birth to a male child. What is the position?

Marriage cannot be performed between Sujatha and Babu as Babu already has a living wife. However, the son born through Sujatha is an illegitimate son.

The act committed by Babu, i.e., having sexual intercourse with Sujatha, who is a girl of 14 years, is an offence under Section 376, I.P.C., even though Sujatha is a consenting party as she is below 16 years of age.

323. There is one Vijaya Nursing Home at Khammam. It is a big hospital. Dr. Vinod is Director of the Hospital. He has control over the staff of the hospital including nurses. Taking advantage of his position as the Head of the hospital, he used to exploit the nurses in the hospital. One night when Muntaj Begum is on night duty, he calls her to his chambers on the pretext of giving some instructions for giving an injection to a particular patient. When she enters into his chambers, while giving instructions he changes the topic and raises some sexual topics and ultimately, he asks her to submit to him for sexual intercourse. When she refused to yield to him and is about to leave the room,

he closes the door and forcibly has sexual intercourse with her without her consent. On the next day also, when another nurse Sridevi is on night duty, Dr. Vinod calls her to his chambers and while giving some instructions, he asks her why she has not married still even though she is very beautiful. She states that she has old parents and two younger sisters and one brother whom she alone has to maintain with her salary. The doctor then changes the topic to sex and starts explaining about sexual intercourse. She being a young girl, aged about 25 years, gets tempted. Thereupon, he has sexual intercourse with her in the hospital. As the Doctor is the Head of the Hospital having control over the staff she does not object and impliedly gives consent for the sexual intercourse. Somehow or the other on the next morning this is known to the other members of the staff and also about the first nurse, Muntaj Begum. At the advice of some of the staff members, both the nurses, Muntaj Begum and Sridevi give complaints before the police. Whether the acts committed by Dr. Vinod amount to rape and whether he is liable for conviction?

In the case of the nurse Muntaj Begum, as the doctor had sexual intercourse with her against her will and without her consent, taking advantage of his position as being on the management board of the hospital, the act committed by the Doctor amounts to rape under Section 375, I.P.C., and he is guilty of the offence under clause (d) of sub-section (2) of Section 376, I.P.C., and is punishable with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and also be liable to fine. The court may, for adequate reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than ten years.

In the case of the second nurse Sridevi, as the doctor, being on the management board of the hospital and also having control over the staff, takes advantage of his position and had sexual intercourse with her in the hospital, even though such sexual intercourse may not amount to rape, still as he had intercourse with Sridevi in the hospital, his act will attract Section 376-D, I.P.C., and he is liable to be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine.

324. Parandhamayya is an agriculturist. He has five acres of wet land. He is in dire necessity for money for purchasing seeds and also fertilisers. He approached a Marwadi, doing money lending business, and borrowed a sum of Rs. 5,000/- by pledging his gold chain weighing about three tolas. Parandhamayya is a regular customer to that Marwadi. One day there is a function in the house of that Marwadi and he extends invitations to all his customers. He also invites Parandhamayya and the latter went to the former's house for the function. When Parandhamayya enters the office room of that Marwadi, he finds his gold chain, pledged to the Marwadi, on the table. On seeing the gold chain, Parandhamayya develops an evil intention of taking it dishonestly. He takes that gold chain and puts it in his banian pocket and innocently attends the function and goes away. After the function, the Marwadi also does not observe anything in the house. But on the next day, having recollected that he left the gold chain pledged by Parandhamayya on the table, the Marwadi goes to the office room and searches for it but it is not found. On enquiry in his house, his servant tells him that Parandhamayya entered into that room on the previous night. Thereupon, the Marwadi gives a complaint to the police suspecting Parandhamayya as the culprit. The Police searches the house of Parandhamayya and traces out the gold chain, but Parandhamayya tells the police that it is his gold chain and showed them the name of his wife inscribed on it. However, the police filed a case against him. Is Parandhamayya liable for any offence?

Under Section 378, I.P.C., whoever, intending to take dishonestly any moveable property out of the possession of any person without that person's consent, moves that property in order to such taking is said to commit theft. Under Sec. 380, I.P.C., whoever commits thefts in a building used as a human dwelling shall be punished with imprisonment of either description for a term which may extend to three years or with fine or with both.

Though the gold chain belongs to Parandhamayya and he is the owner of it, he having pledged it with the Marwadi and taken loan, possession passes to the Marwadi and he is in legal possession of that gold chain. As long as Parandhamayya has not repaid the loan amount, the lien on the gold chain continues with the Marwadi and taking it from his house,

even by its owner, amounts to taking the gold chain dishonestly out of the lawful possession of the Marwadi without his consent. So, Parandhamayya has committed the offence of theft in a building and so he is liable for the offence under Section 380, I.P.C.

325. Mohd. Abdul Sattar went to Saudi Arabia leaving his wife Razia Begum and minor children, aged 3 years and 5 years, at Hyderabad. He used to send money every month to his wife by way of Bank draft and his wife opened an account in Baroda Bank and she was withdrawing money now and then for her necessities and keeping the balance in her account. After two years, about Rs. one lakh was standing to the credit of Razia Begum. Ibrahim was working as a Messenger in that Baroda Bank and he was observing the account maintained by Razia Begum and he saw her account in the Bank and found that about Rs. 1 lakh was lying to her credit. He also enquired about her family history and as there was no male assistance in her house and she was living with her two minor children, he thought of a plan to take away the amount from her. He took the assistance of his friend, Dustagir and one day both Ibrahim and Dustagir went to her house during night armed with pistols and entered into her house and Dustagir caught hold of one of the children at the point of pistol and Ibrahim at the point of another pistol led her to the drawing room and asked her to take out the cheque book and when she took out the cheque book, Ibrahim asked her to sign a blank cheque. As she was put in fear at the point of pistol and her son was also threatened to be shot at unless she signed the cheque, Razia Begum signed on the cheque and delivered it to Ibrahim. They also threatened her not to inform about this to any body nor to the Bank. On the next day, they filled up the cheque for Rs. 50,000/- in favour of Dustagir and withdrew the amount and shared it among themselves. Razia Begum gave a complaint to the police. After investigation, police arrested the Messenger, Ibrahim and Dustagir. Whether they have committed any offence?

Under Section 383, I.P.C., whoever intentionally puts any person in fear of any injury to that person or to any other and thereby dishonestly induces the person so put in fear, to deliver to any person any property or valuable security, of anything signed or sealed which may be converted into a valuable security, commits the offence of 'extortion' and under Section 384, I.P.C., whoever commits extortion shall

be punished with imprisonment of either description for a term which may extend to three years or with fine or with both.

As Ibrahim and Dustagir put Razia Begum and her minor son in fear of death and thereby dishonestly induced Razia Begum to put her signature on the cheque and they converted that cheque into cash by withdrawing from the Bank, both Ibrahim and Dustagir are liable for the offence of extortion, punishable under Section 383, I.P.C.

326. Ranganadham and his six associates are running a Gosala. All the cattle are being admitted in that Gosala for the purpose of maintenance. They are agitating against the establishment of a slaughter house at Rudram. One day Ranganadham and his associates find one person, Mohd. Ali driving a herd of cattle to the slaughter house. Immediately, Ranganadham and his followers surround the cattle and beat Mohd. Ali and his men with deadly weapons causing grievous injuries to some of them and prevent them from taking the cattle to the slaughter house and they bring the cattle into their Gosala. Whether Ranganadham and his followers are liable for any offence?

- * When five or more persons conjointly commit or attempt to commit a robbery or where the whole number of persons conjointly committing or attempting to commit a robbery and persons present and aiding such commission of attempt amount to five or more, every person so committing, attempting or aiding is said to commit, 'dacoity' under Section 391, I.P.C. Under Section 395, I.P.C., whoever commits dacoity shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years and shall also be liable to fine. Under Section 397, I.P.C., if, at the time of committing robbery or dacoity, the offender uses any deadly weapon or causes grievous hurt to any person or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years.

As Ranganadham and his associates, who are seven in all, i.e., more than five in number, have dishonestly driven the cattle of Mohd. Ali to their Gosala after beating Mohd. Ali and his associates with deadly weapons causing grievous hurt

to some of them, Ranganadham and his associates are liable for the offence under Section 391 read with Sections 395 and 397, I.P.C.

327. Dharma Rao, a landlord, wants to purchase a gold chain to his wife. But his well wishers advise him not to purchase from shop but it is always better to get it prepared by a goldsmith. Then he approaches a goldsmith, Veerachari who is preparing gold ornaments. and he entrusts three tolas of gold to him asking him to prepare one gold chain. Veerachari asks him to come after a fortnight. After a fortnight, Dharma Rao goes to the shop of the goldsmith and asks for the gold chain. Veerachari, saying that it is still under preparation, asks him to come after a week. Like that, the gold smith has postponed the matter for about six months. Thereupon, Dharma Rao got suspicious about the conduct of the goldsmith and makes enquiries. On enquiry, he comes to know that the gold smith has already sold the gold given by him to some third party and misappropriated the amount for himself. Thereupon, Dharma Rao gave a complaint to the police. Whether Veerachari, the goldsmith has committed any offence?

* Under Section 403, I.P.C., whoever dishonestly misappropriates or converts to his own use any moveable property shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both.

As the goldsmith, Veerachari dishonestly converted the gold into cash by selling the same to a third party and misappropriated the same, he is liable for the offence under Section 403, I.P.C.

328. Chaganlal is having vast properties, both moveable and immovable. Giridhar is working as a Clerk under him for the last several years and obtains his confidence. Chaganlal has his wife, two sons and daughter. One day Chaganlal issues a cheque in favour of his clerk for a sum of Rs. 1 lakh and asks him to get money for giving it to a party. Giridhar goes to the bank and gets the money to the house of Chaganlal. By the time Giridhar reaches the house of Chaganlal, Chaganlal, dies of heart attack. Then Giridhar develops an idea of dishonestly misappropriating the amount of Rs. 1 lakh, withdrawn by him on behalf of Chaganlal, for himself. He does not return the said amount to the wife and children of Chaganlal, who are Chaganlal's legal heirs,

and dishonestly misappropriates the amount to his own use. After one month, Chaganlal's wife verifies the Bank account of her husband and finds that Rs. 1 lakh is misappropriated by their clerk, Giridhar. Whether Giridhar has committed any offence?

- * Under Section 404, I.P.C., whoever dishonestly misappropriates or converts to his own use property, knowing that such property was in the possession of a deceased person at the time of that person's decease and has not since been in the possession of any person legally entitled to such possession, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine; and if the offender at the time of such person's decease was employed by him as a clerk or servant, the imprisonment may extend to seven years.

As Giridhar dishonestly misappropriated Rs. 1 lakh knowing that amount belongs to Chaganlal and after his death he did not give the money to the wife and children of Chaganlal, who are his legal heirs and who are legally entitled to possession of that cash after the death of Chaganlal, Giridhar is liable for punishment under Section 404, I.P.C.

329. Nawab Mir Saleem Khan was a millionaire. He possessed several valuable diamonds, gold jewellery and other valuables. He became ill and he was admitted in a super-speciality hospital, for treatment. Mohd. Abbukhan had been working as a Sheristadar under the Nawab and he was looking after all his affairs and he was knowing everything about the properties and other affairs of Nawab Mir Saleem Khan. While the Nawab was in the hospital, he asked his Sheristadar to bring an advocate to execute a will and accordingly their family advocate was brought in and according to the wishes of Nawab, the advocate prepared a will. Under the will, one box containing gold jewellery and diamonds, worth about Rs. 50 lakhs, which was hidden in a secret place, was bequeathed to his grandson. The Sheristadar knew the secret place where the box containing the gold jewellery was hidden. After executing the will, the Nawab died. After the death of the Nawab, the Sheristadar dishonestly took away the box containing the gold jewellery which as per the will has to go to the grandson of the Nawab and misappropriated the same. After some time, when the grand son came to know that the box containing gold jewellery was bequeathed to him by his grand father, searched

for it and he could not find any box in the place where it was said to have been hidden. He entertained a doubt against the Sheristadar and gave a complaint to the Police. The Police on investigation found that the Sheristadar dishonestly misappropriated the gold jewellery. Whether the Sheristadar has committed any offence?

Under Section 404, I.P.C., whoever dishonestly misappropriates or converts to his own use property, knowing that such property was in the possession of a deceased person at the time of that person's decease, and has not since been in the possession of any person legally entitled to such possession, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine; and if the offender at the time of such person's decease was employed by him as a clerk or servant, the imprisonment may extend to seven years.

As the Sheristadar has dishonestly misappropriated the gold jewellery knowing that property was in the possession of the Nawab at the time of his decease, to which the grandson of the Nawab is legally entitled after the death of the Nawab, and as the Sheristadar was employed under the Nawab at the time of his decease, the Sheristadar is liable for the offence under Section 404, I.P.C., and is liable for punishment with imprisonment which may extend to seven years.

330. There is a big company by name M/s. Lakshmi Electronics & Computers Private Limited, dealing in electronics and computer parts. It is a big concern wherein about five hundred employees are working. Out of the salaries payable to its employees, contributions to Provident Fund and Employee's State Insurance Fund are being deducted. After deducting those amounts they have to be credited to the respective accounts of the employees. But the company has dishonestly diverted the amount so deducted from the salaries of the employees towards Provident Fund and Employees State Insurance Corporation, and converted the same for the release of one consignment of goods received from Japan. As they do not credit the amounts so deducted to the respective accounts within time, the concerned authorities under Provident Fund Act and the Employees State Insurance Act make a surprise visit and find that the amounts so deducted from the salaries of the employees were not credited to their accounts since a long

time, and they have dishonestly misappropriated that amount. Whether the Company has committed any offence under the Indian Penal Code?

Under Section 405, I.P.C., whoever, being in any manner entrusted with property or with any dominion over property, dishonestly misappropriates or converts to his own use that property or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "Criminal Breach of Trust" Under Section 406, I.P.C., whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years or with fine or with both.

Under Explanation I to Section 405, I.P.C., a person, being an employer, who deducts the employee's contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension fund established by any law for the time being in force, shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.

Similarly, under Explanation 2 to Section 405, I.P.C., a person, being an employer, who deducts the employee's contribution from the wages payable to the employee for credit to the Employee's State Insurance Fund held and administered by the Employees' State Insurance Corporation established under the Employees' State Insurance Act, 1948, shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said fund in violation of the said Act, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.

As the above said Company has deducted the employee's contribution from the wages payable to the employees for credit to Provident Fund and Employees' State Insurance

Corporation and has committed default in the payment of the said contributions to the said funds in violation of the respective Acts, the said company is deemed to have dishonestly used the amount of the said contribution in violation of the direction of law, and consequently it is liable for punishment under Section 406, I.P.C.

331. Jagadeesh Motor Transport Company is engaged in transport of goods from one place to another on payment of freight charges. Raghavendra Cloth Stores are whole sale dealers of cloth. One day they booked one consignment of polyester pant and shirt pieces from Hyderabad to Kurnool and entrusted the consignment to Jagdeesh Motor Transport Company. They paid the freight charges. The driver of the lorry has prior information that the parcel contained very costly cloth pieces. On the way he stops the lorry and dishonestly takes out the parcel containing valuable clothes and sells it to some third parties and misappropriates that amount. After some time, the Kurnool party who is expecting the parcel gives a complaint that the consignment booked in their favour has not reached the destination. Thereupon, on investigation it is revealed that the driver of the lorry dishonestly took the consignment and sold it to third parties. Whether the Transport Company is liable for any offence?

Under Section 407, I.P.C., whoever, being entrusted with property as a carrier, wharfinger or warehouse-keeper, commits criminal breach of trust in respect of such property shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine.

As Jagdeesh Transport Company was entrusted with the cloth consignment for being sent to Kurnool and its driver has misappropriated the same for which the company is liable which is expected to transport the goods to the party to whom they are booked and as the said company, being entrusted with the cloth consignment, as a carrier, committed criminal breach of trust in respect of that property, the company is liable for punishment under Section 407, I.P.C.

332. Mahesh Bank has introduced a saving scheme for ladies. Every day each lady has to subscribe at the rate of Rs. 2/- and the Bank advertised attractive gifts and after six months a lumpsum

amount of Rs. 500/- is offered under the said scheme. Under the scheme, a clerk of the Bank will visit the house of every subscriber daily and collect the amount and credit the same to the account of the respective subscriber. Attracted by the the gifts and also hoping that a lumpsum amount Rs. 500/- could be received after a period of six months, several ladies joined the scheme and they subscribed their daily subscriptions to the clerk. The Bank Clerk daily comes to the houses of the subscribers and collects the subscriptions and makes entries in the pass books. But he does not credit the amounts so collected from the subscribers to their respective accounts in the Bank. After six months, the subscribers approach the bank for the lumpsum amount. But the Bank people inform that no amounts were paid to their accounts. Thereupon, a complaint is given to the police. Whether any offence is committed by the Clerk who collected the amounts on behalf of the Bank and failed to credit the same to the respective accounts?

Under Section 409, I.P.C., whoever, being in any manner entrusted with property or with any dominion over property in this capacity of a public servant or in the way of his business as a Banker, merchant, agent etc., commits criminal breach of trust in respect of that property shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

As the Bank clerk has collected the amounts from the subscribers and failed to credit the same to their respective accounts and dishonestly misappropriated the amounts so collected he shall be punished under Section 409, I.P.C.

333. In Sarada Nagar, the Government proposed to construct a Housing colony for SCs/STs and other economically backward classes. For that purpose some land measuring 200 acres was acquired. After completing all the formalities, the Mandal Revenue Officer started distributing the compensation to the persons from whom the land was acquired. He distributed the compensation to all the living persons. He found that some persons were dead. He prepared receipts in the names of dead persons and misappropriated the amounts payable to those dead persons. The Legal Representatives of the dead persons filed complaints for non-payment of compensation. Whether the M.R.O. is liable for any offence?

Under Section 409, I.P.C., whoever, being in any manner entrusted with property or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, agent etc., committed criminal breach of trust in respect of that property shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

As the M.R.O., who is a public servant, has misappropriated the compensation amount payable to the legal representatives of the deceased persons, he is liable for the offence under Section 409, I.P.C.

334. A Customs Officer seized large quantities of brown sugar. After enquiry, he ordered destruction of the prohibited material. The Officer concerned, instead of destroying the prohibited material as per the directions of the Customs Officer, sold the same to a third party and retained the proceeds of such sale and misappropriated the same for himself. Whether the Officer who sold the prohibited material contrary to the directions of the Customs Officer and misappropriated the sale proceeds is guilty of any offence?

- * Under Section 409, I.P.C., whoever, being in any manner entrusted with property or with any dominion over property in his capacity of a public servant, commits criminal breach of trust in respect of that property, shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

When goods are ordered to be destroyed and contrary to that, the officer concerned sold the said goods and misappropriates the sale proceeds for himself, he is said to commit criminal breach of trust. The owner still maintains his right of ownership and the right subsists until the abandonment of destruction is completed. As long as the destruction or abandonment is not completed, the property is still the property of the owner and its improper use by the person entrusted to destroy it makes him guilty of the offence of criminal breach of trust.

In the above case, consequent to the seizure of the prohibited material the Government represented by the Customs Officer

has become the owner of the said goods and when he has ordered destruction of the said goods, as long as destruction is not completed, the property is still the property of the owner and its improper use by the officer concerned who was entrusted to destroy the same, makes him guilty of the offence of criminal breach of trust and he is liable for punishment under Section 409, I.P.C.

335. Dr. Prahlada Rao was running a Nursing Home at Karimnagar. He earned a lot through his profession as a doctor. One night, a gang of six persons covering their faces with mask, armed with knives knocked the door of the doctor's house. The doctor opened the door thinking that his services were required by some patient. But the moment he opened the door, the gang gagged him and looted his gold and cash. On hearing the noise, his son woke up and tried to rescue his father but the thieves stabbed him with a knife causing an injury on his hand. Ultimately, they took away gold ornaments and cash, all worth about Rs. 50,000/-. After the thieves left the house, the doctor telephoned to the police, who immediately rushed to the spot and made an investigation. They succeeded in arresting the thieves and recover from them the gold and cash stolen from the house of the doctor. A charge sheet was filed against the persons arrested. During trial, the doctor could not identify the persons who have committed theft in his house on that night but he could only identify his gold articles. The prosecution could not establish the guilt of the accused for the offence under Section 395, I.P.C., but it was proved that the stolen properties belonging to the doctor are found in possession of the accused and they were recovered from their possession. Whether the accused are liable for the offence under Section 412, I.P.C.?

- ‘ Under Section 412, I.P.C., whoever dishonestly receives or retains any stolen property, the possession whereof he knows or has reason to believe to have been transferred by the commission of dacoity or dishonestly receives from a person whom he knows or has reason to believe to belong or to have belonged to a gang of dacoits, property which he knows or has reason to believe to have been stolen shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years and shall also be liable to fine.



In the above case as the prosecution witnesses failed to identify the accused in the identification parade but the property looted in the dacoity was recovered from their possession, the accused cannot be convicted under Section 397, I.P.C., but they are liable for the offence under Section 412, I.P.C.

336. Venkata Narasayya has got two acres of land in Hayathnagar. He sold the land to Kanakayya for a sum of Rs. 10,000/-. After the sale of that land, housing colony came by the side of the above said land and roads were laid. Consequently the cost of land in that area went up by four times of the original value. Rajeswara Rao did not know that Venkata Narasayya had sold his two acres of land and he believed that Venkata Narasayya was still the owner of that land. With that bonafide belief, he approached Venkata Narasayya and requested him to sell the above said land to him for a sum of Rs. 50,000/-. As he had offered a huge amount of Rs. 50,000/- for the land which he sold it only for Rs. 10,000/-, Venkata Narasayya conceived an evil design and without disclosing the fact that he had already sold that land to Kanakayya, he agreed to sell the land to Rajeswara Rao. Accordingly, Venkata Narasayya received the entire sale consideration from Rajeswara Rao and got the sale deed registered. Subsequently, the first Vendee, Kanakayya after coming to know

of the second sale, approached Rajeswara Rao and told him that the land purchased by him from Venkata Narasayya was already sold to him under a registered sale deed and showed the registered sale deed. Whether Venkata Narasayya has committed any offence?

Under Section 415, I.P.C., whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person or to consent that any person shall retain any property or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat". Under Section 420, I.P.C., whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine.

As Venkata Narasayya has cheated Rajeswara Rao by not telling him that the land which he now offered for sale to him, was already sold to Kanakayya and thereby dishonestly induced him to deliver Rs. 50,000/- to him, Venkata Narasayya is said to have committed the offence of cheating under Section 415, I.P.C., and is liable for punishment under Section 420, I.P.C.

337. Vidyasagar is a richman. He has got vast properties. He is a member of a leading club in the city. He commands good influence. He has one son, Bharat. He studied upto Intermediate with great difficulty as he is poor in studies and thereafter, he discontinued. As Vidyasagar is a noted person and a member of a club, wherever he goes, everyone is asking him about his son's educational qualification. So he asked his son to join in B.A. With much reluctance Bharat joined in B.A., but he did not write the examinations. Then Vidyasagar thinks of a plan and approaches a clever student, Vinodh, who is doing Ph.d. and requests him to write the examinations on behalf of his son and he assures him that he will see that no harm is done to him and he also offers him a very good money. As Vinodh is a poor boy

who is experiencing great difficulties to do his Ph.d. and also he is unable to pay mess bill and room rent, he agrees to the request of Vidyasagar. Accordingly he wrote the examinations on behalf of Bharat and Bharat passed in first division. He even got a gold medal in Economics having secured University first rank. The second rank student, doubted the genuineness of the rank. He gave a complaint to the Registrar of the University. There upon, an enquiry was held and in that enquiry the answer scripts of B.A. examination said to have been written by Bharat were compared with his admitted hand writing and also with the previous examination answer scripts and after obtaining the opinion of Handwriting Expert, the University came to the conclusion that the answer papers said to have been written by Bharat were not written by him but they were written by some other person. They gave a complaint to the police and the police after investigation found that Vinodh, wrote the examination pretending himself to be Bharat. Is Vinodh liable for any offence?

- * Under Section 416, I.P.C., a person is said to "Cheat by Personation" if he cheats by pretending to be some other person, or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is and under Section 419, I.P.C., whoever cheats by personation shall be punished with imprisonment of either description for a term which may extend to three years or with fine or with both.

As Vinodh has written B.A. examination papers pretending himself to be Bharat, he is said to have committed the offence of cheating and so under Section 419, I.P.C., he is liable for punishment.

338. Anitha was a good sports woman. She participated in Asian Games and won gold medals. She was a beautiful lady also. One Producer, Madhava Rao thought of booking her in his film. Accordingly, he approached that lady and asked her to act in his film and offered a very good amount. Rajarao, the Director who accompanied the producer, also assured her, all his assistance. She agreed and acted in his picture. That picture was successful and it fetched huge collections. Thereupon, several offers came to Anitha for acting but she was telling all of them that unless they took permission from the Director Rajarao, she would not accept the offers. She developed such a faith towards

the Director. The Director Rajarao intended to marry her, but he never expressed that desire to her. In course of time, she became friendly with Chakradhar the son of the producer, Madhava Rao and that friendship subsequently turned into love between them and they decided to marry. In the betrothal ceremony, Chakradhar presented a diamond ring, worth about Rs. 5 lakhs to Anitha. The marriage date was yet to be fixed. One day, the Director Rajarao invited Anitha for tea at a Hotel, which was by the side of a beach. While chitchating, she told that her marriage was fixed with Chakdradhar, the son of the producer Madhava Rao and that she was given a diamond ring during the betrothal. She took out the ring and showed it to Raja Rao. On hearing that news, Rajarao got a shock of his life. He felt so jealous that he snatched the ring from her and threw it in the sea. Whether Rajarao has committed any offence?

Under Section 425, I.P.C., whoever, with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof, destroys or diminishes its value or utility or affects it injuriously, commits 'Mischief'. Under Section 426, I.P.C., whoever commits mischief shall be punished with imprisonment of either description for a term which may extend to three months or with fine or with both.

So, the act of throwing the diamond ring of Anitha by Rajarao into the sea amounts to causing wrongful loss to Anitha and so Rajarao has committed the offence of Mischief within the meaning of Section 425, I.P.C., and is liable for punishment under Section 426, I.P.C.

339. Nagarjuna Sagar Canal was constructed for providing irrigation facilities to different districts. It has right canal, left canal and other sub-canal. The lands situated at tail end of the canal could not receive sufficient water. Yadagiri got a land under the sub-canal. But Ramanna Goud, who had land on the upper level, put a cross-bund to the sub-canal and diverted the water to Yadagiri's field thereby causing diminution of the supply of water to his agricultural field, by deviating the normal and natural course of events. As Ramanna Goud erected cross-burd and diverted the water to his fields without allowing the water to the field of Yadagiri, Yadigiri did not receive water and

so his lands were dried to up. Has Ramanna Goud committed any offence?

Whoever commits mischief by doing any act which causes or which he knows to be likely to cause a diminution of the supply of water for agricultural purposes or for food or drink for human beings or for animals which are property for cleanliness or for carrying on any manufacture, shall be punished with imprisonment of either description for a term which may extend to five years or with fine or with bund.

As Ramanna Goud has diverted the water by erecting cross bunds, thereby diminishing water supply to the field of Yadagiri, he is liable for punishment under Section 430, I.P.C.

340. Panchayat Elections were conducted after a lapse of ten years. Ranganaikulu was the Ex-Sarpanch. He misappropriated huge amounts of the Panchayat by showing false accounts. He again contested in the Panchayat elections as a Sarpanch. Harijans and most of the Backward class people in that village were dissatisfied with Ranganaikulu. They voted in favour of Sudhakar and ultimately he was successful in the elections and was elected as Sarpanch of the village. The followers of Ranganaikulu, with his active assistance, on one night set fire to the houses of the Harijans. Whether Ranganaikulu and his followers are liable for the offence under Section 436, I.P.C.?

Under Section 436, I.P.C., whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause the destruction of any building which is ordinarily used as a place of worship or as a human dwelling or as a place for the custody of property, shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

As Ranganaikulu and his followers set fire to the houses of the Harijans thereby caused mischief by fire intending to cause the destruction of their houses which are used as human dwelling, they are liable for punishment under Section 436, I.P.C.

341. Ganga Prasad and Parvathi are husband and wife and they are aged 35 years and 27 years respectively. They have two

sons. Along with them, Saraswathi, the widowed sister of Ganga Prasad, aged about 38 years also stays. Seetharamaswamy, aged about 40 years, who is also residing in the same colony, had an eye over that widowed sister, Saraswathi. One day at mid-night, Seetharamaswamy unchained the outer door of the compound gate of Ganga Prasad's house and entered into the room where Saraswathi was sleeping with the object of having sexual intercourse with Saraswathi. While he was entering into the room, the eldest son of Ganga Prasad, aged about 8 years, who was sleeping on the verandah, saw the man entering the room and he cried out 'thief-thief'. Thereupon all the inmates woke up and caught him, while he was running out of the house. Has Seetharamaswamy committed any offence?

Under Section 457, I.P.C., whoever commits lurking house-trespass by night or house breaking by night in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine and if the offence intended to be committed is theft, the term of the intended to be committed is theft, the term of the imprisonment may be extended to fourteen years.

As Seetharamayya has committed house trespass having taken precautions to conceal such house trespass from the inmates of the house of Ganga Prasad in order to have sexual intercourse with Saraswathi, he is liable for the offence under Section 457, I.P.C.

342. Prahlada Rao had a Savings Bank Account in State Bank of India and he was having about Rs. 20,000/- in his account. He kept his cheque book in the table drawer. He signed on one cheque in that cheque book without filling the amount column with the idea of filling it at the time of presenting the cheque. One of his friends, Rajesh came to his house, while Prahlada Rao was in the bath room. Rajesh was asked to sit in the Drawing Room. While sitting there, Rajesh opened the table drawer and saw the cheque book containing the signature of Prahlada Rao on one blank cheque. He detached that cheque and left the house and filled up 'Rs. 10,000/-' in the amount column and withdrew the said amount from the bank. Subsequently, Prahlada Rao found the signed blank cheque missing and enquired in the bank where he was informed that an amount of Rs. 10,000/- was withdrawn

by somebody that morning. He recollected the events happened in the morning and suspected his friend, Rajesh and gave a complaint to the police. The police after investigation, found that it is Rajesh who has withdrawn the amount by filling up the blank cheque. Whether Rajesh has committed any offence?

Under Section 463, I.P.C., whoever makes any false document or part of a document, with intent to cause damage or injury to the public or to any person or to support any claim or title or to cause any person to part with property or to enter into any express or implied contract or with intent to commit fraud is said to have committed the offence of "forgery" and under Section 465, I.P.C., whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both.

As Rajesh has taken out a signed cheque and filled up the cheque by fraudulently inserting the sum and drawn the said amount, he has committed the offence of forgery u/s. 463, I.P.C. and he is liable for punishment under Section 464, I.P.C.

343. A notification was published in daily papers calling for applications for the posts of Junior Assistants in the Life Insurance Corporation of India and all the posts were stated to be reserved for Scheduled Castes and Scheduled Tribes. Chaitanya Kumar, who studied B.A. and aged 24 years belonged to Kapu, a forward caste. 'Konda Kapu' is a scheduled tribe and he thought that if 'Konda' was inserted in the caste certificate before 'Kapu' he could claim the benefit of Scheduled Tribe and apply for the posts advertised by the Life Insurance Company. Accordingly, he inserted 'Konda' before 'Kapu' in his caste certificate and applied for the post and he was selected as a Junior Assistant under the reserved quota. But on verification by the Social Welfare Department, it was proved that the caste certificate was forged by Chaitanya Kumar. Whether he has committed any offence?

Under Section 463, I.P.C., whoever makes any false document or part of a document with intent to support any claim is said to commit the offence of 'forgery' and under section 471 r/w. Section 465, I.P.C., whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document shall be punished with

imprisonment of either description for a term which may extend to two years or with fine or with both.

As Chaitanya Kumar has forged the caste certificate by putting the word 'Konda' before the caste 'Kapu' thereby fraudulently converted the same into a Scheduled Tribe and used that certificate as a genuine one which he knows to be a forged document, he is liable for the offence under Section 463 r/w. 471 and 465, I.P.C.

344. K. Ram Kumar is studying Intermediate in R.B.R. Junior College and he is staying in the college hostel. Another boy bearing the same name, K. Ram Kumar is also staying in the same hostel in a different room. The father's name of the first boy K. Ram Kumar is Paparao and the father's name of the second boy, K. Ram Kumar is Rangayya. One day, Rangayya, has sent an amount of Rs. 1000/- to his son K. Ram Kumar by M.O. The Postman brought the Money order to the hostel and enquired about the boy K. Ram Kumar. K. Ram Kumar, s/o Paparao sees the postman asking for K. Ram Kumar and he tells him that he is the boy to whom that money order is intended, knowing fully well that it is not for him. He succeeded in convincing the postman and receives the amount. K. Ram Kumar, son of Rangayya wrote a letter to his father reminding him to send the amount as he has to pay the hostel bill. Immediately Rangayya rushed to the boy and tells him that he had already sent Rs. 1,000/- to him by money order. On enquiry in the post office, it is revealed that K. Ramkumar, son of Paparao has received that amount pretending himself to be the son of Rangayya taking advantage of bearing the same name. Is K. Ram Kumar, son of Rangayya liable for any offence?

Under Section 467, I.P.C., whoever forges a document which purports to be an acquittance or receipt acknowledging payment of money shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

As K. Ramkumar, son of Paparao has forged the acknowledgment for the amount, which is intended to another person, and received the said amount from the postman, he is liable for the offence under Section 467, I.P.C.

345. Anjaneya Sarma has acquired huge properties. He has

one son and two daughters. All are married and his son has one son. Anjaneya Sarma executed an unregistered will, bequeathing all his properties in favour of his grand son. Some time thereafter, Anjaneya Sarma dies. Both the daughters along with their respective husbands come to the house of their father for the funeral ceremony. Then they learn that their father executed a will bequeathing all his properties in favour of his grand son. Both the sons-in-law of Anjaneya Sarma grew jealous of it and they searched for the will, traced it and destroyed it. The son of Anjaneya Sarma saw this and gave a police complaint. Are the sons-in-law liable for any offence?

Under Section 477, I.P.C., whoever fraudulently or dishonestly or with intent to cause damage or injury to the public or to any person, destroys any document which is or purports to be a will shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine.

As the two sons-in-law have destroyed the will fraudulently and dishonestly, they are liable for the offence under Section 477, I.P.C.

346. Balasubramanyam is working as a Village Assistant. He is in custody of the records pertaining to lands. Somayya filed a suit for permanent injunction against his neighbour, Gangayya in respect of two acres of wet land claiming that he is in possession and enjoyment of that land. In fact, he is not in possession of the said land and it is his neighbour who is in possession of the said land and the revenue records also show the name of the neighbour as a person in actual possession and enjoyment. Somayya approaches the Village Assistant, Balasubramanyam and asks him to show his name as a person in possession of the land in the revenue records and he offers huge amount for doing that act. Balasubramanyam, accordingly alters the name of Gangayya by inserting the name of Somayya in the revenue accounts. Somayya obtains a certified copy of the altered document and files it in court. Gangayya also files a certified copy of the same document which was obtained by him prior to the filing of the suit showing his name as the person in possession. The court found that the document filed by the plaintiff, Somayya is not the correct one and the name of the person in possession is held to have been wrongly altered. Is the Village Assistant

liable for any offence?

Under Section 477-A, I.P.C., whoever being a clerk, officer or servant wilfully and with intent to defraud destroys, alters, mutilates or falsifies any book, paper, account etc., which belongs to or is in the possession of his employer, is liable for punishment with imprisonment of either description for a term which may extend to seven years or with fine or with both.

As the Village Assistant, who is a servant of the Revenue Department, altered the name of Somayya by inserting the name of Gangayya as the person in possession of that particular land, he is liable for punishment under Section 477-A, I.P.C.

347. There is a very big gang dealing in counter-feit currency notes. That gang is divided into several groups. Each group is looking after certain type of act in relation to counterfeit notes. Group No.1 is dealing in purchasing machinery, instruments and other material for the purpose of printing counterfeit notes. Group No.2 is in actual preparation or printing process of the counterfeit currency notes. Group No. 3 is in possession of the forged or counterfeit currency notes knowing them to be forged or counterfeit currency notes, intending to use the same as genuine. Group No. 4 is in charge of selling the forged or counterfeit currency notes knowing them to be forged or counterfeit currency notes. Thus, the entire gang is involved in manufacturing forged or counterfeit currency notes and selling them to the parties for one-third value of the genuine currency notes. One day, Group No. 4 which is in charge of sale of counterfeit notes had a deal with a party, by name Chuttan Lal, who has come from Calcutta. He approached the leader of group No.4 and asked to supply counterfeit currency notes worth Rs. 30 lakhs and he offered him Rs. 10 lakhs of genuine currency notes. But he asked the leader of group No. 4 to bring the counterfeit currency to the ship at the port where he promised to give genuine currency notes. They have agreed. They had discussed the way of taking the forged or counterfeit currency notes in a particular type of suit case. Accordingly at about 3-00 P.M. the leader of Group No. 4 accompanied by two of his persons went to the port and met Chuttan Lal and exchanged the suit cases. The police had information about this deal and they secretly watched the deal and exchanging of the suit cases. Immediately,

the police caught hold of both the parties and opened the suitcase and found currency notes worth Rs. 30 lakhs.

On examination, they are found to be counterfeit currency notes and in the other suit case they find Rs. 10 lakhs which are genuine currency notes. Immediately, they arrested both the parties and interrogated the leader of Group No. 4, as to how he came into possession of the forged counterfeit currency notes. He revealed in the presence of mediators about the gang's modus operandi. On the information furnished by the leader of Group No. 4, the police party raided the four groups and arrested the persons involved and seized the counterfeit currency and other material. Whether they are liable for any offence and if so what are the offences committed by them?

Under Section 489-D, I.P.C., whoever makes or performs any part of the process of making or buys or sells or disposes of or has in his possession, any machinery, instrument or material for the purpose of being used or knowing or having reason to believe that it is intended to be used for forging or counterfeiting any currency-note or bank-note, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

As Group No. 1 is proved to be in possession of machinery, and other material for the purpose of being used for forging or counterfeiting currency notes, this group is liable for punishment under Section 489-D, I.P.C.

Under Section 489-A, I.P.C., whoever counterfeits or knowingly performs any part of the process of counterfeiting any currency-notes or bank-notes shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

As Group No.2 is proved to have been engaged in the process of manufacturing counterfeit currency notes, this group is liable for punishment under Section 489-A, I.P.C.

Under Section 489-C, I.P.C., whoever has in his possession any forged or counterfeit currency note or bank note knowing or having reason to believe the same to be forged or counterfeit and intending to use the same as genuine or that it may be

used as genuine shall be punished with imprisonment of either description for a term which may extend to seven years or with fine or with both.

As Group No.3 is proved to be in possession of forged or counterfeit currency notes knowing them to be forged or counterfeit intending the same to be used as genuine, this group is liable for punishment under Section 489-C, I.P.C.

Under Section 489-B, I.P.C., whoever sells to, or buys or receives from, any other person or otherwise traffics in or uses as genuine, any forged or counterfeit currency note or bank note, knowing or having reason to believe the same to be forged or counterfeit, shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

As Group No.4 is proved to have been selling forged or counterfeit currency-notes, knowing the same to be forged or counterfeit, this group No.4 is liable for the offence under Section 489-B, I.P.C.

As Chuttan Lal bought from Group No.4 forged or counterfeit currency notes by paying one-third of genuine currency, knowing the same to be forged or counterfeit, he is also liable for the offence under Section 489-B, I.P.C.

348. Vasudeva Rao was working as a Divisional Forest Officer at Visakhapatnam. He was transferred to Dandakaranya Forest. That forest area was mostly inhabited by Girijans. Vasudeva Rao did not take his family to that place as it was a forest area and he put up his residence in a guest house, and he was going to Visakhapatnam now and then. One Girijan lady, Sabitha was working as a maid servant in the guest house. She was young, aged about 23 years and was unmarried. As Vasudeva Rao was staying in the guest house alone and that young lady was moving about in the guest house frequently, he had an eye on Sabitha. He used to give her money every now and then and have a free talk with her. One day, she got stuck in the guest house until late in the night because of a heavy downpour. Vasudeva Rao called her into his bed room and tried to outrage her modesty. She innocently told him that unless she was married, she should not be touched. Then he said that he would marry her and so saying, he put his ring to her finger and told her that he

married her in the form of Gandharvas who used to marry by putting rings to the bride and he told her that it was a valid marriage. She innocently believed that he married her and thereafter, submitted herself to him. Shortly thereafter, he was transferred to Visakhapatnam. He left for Visakhapatnam without the knowledge of Sabitha. Sabitha became pregnant. Has Vasudeva Rao committed any offence, if so, what is it?

Under Section 493, I.P.C., every man by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

As Vasudeva Rao by deceit caused Sabitha to believe that she is lawfully married to him and had sexual intercourse with him in that belief, he is liable for punishment under Section 493, I.P.C.

349. Chandra Mouli is the owner of a rice mill, "Bhagyalakshmi Rice Mills". Janakibhai is his wife and they have two sons. Recently the father of Chandra Mouli died and so he wanted to immerse the ashes of his late father in Ganga waters at Varanasi. So, Chandra Mouli along with his family members went on pilgrimage to Varanasi and also to see the other important places in and around Varanasi. They were travelling from one place to another. When the bus in which they were travelling reached an unmanned level crossing, an express train came and dashed against the bus. Chandra Mouli received some minor injuries but his wife received grievous injuries. Their sons were safe. His wife, Janakibai was admitted in a private nursing home for treatment of the injuries sustained by her. As her position was critical, the doctors advised Chandra Mouli to give medicines on time and have a watch over the patient both day and night. As he was alone and his sons were young in age, he engaged one nurse exclusively to attend on his wife, by paying substantial remuneration. The doctor told the nurse to give a particular medicine at 1-00 A.M. He also cautioned the nurse that if that medicine was not given at that particular time, the patient might fall in coma and she might get paralysis stroke. In spite of the caution given by the doctor, the nurse failed to give the medicine at 1 'o' clock in the night. Consequently the patient fell in coma

and suffered with partial paralysis. Is the nurse liable for any offence?

Under Section 491, I.P.C., whoever, being bound by a lawful contract to attend on or to supply the wants of any person, who, by reason of youth, or of unsoundness of mind or of a disease or bodily weakness, is helpless or incapable of providing for his own safety or of supplying his own wants, voluntarily omits so to do, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred rupees or with both.

As the nurse, being bound by a lawful contract, to attend on Janakibai, the wife of Chandra Mouli, who was bed-ridden on account of receipt of grievous injuries in a bus accident. is incapable of providing for her own needs, has failed to or omitted to give medicine to the patient as per the advice of the doctor for which she was appointed, she (the nurse) is liable for the offence under Section 491, I.P.C.

350. Raghu married Jayalakshmi as per Hindu rites and caste custom. Subsequently, Raghu got promotion and on promotion he was transferred to Visakhapatnam. At Visakhapatnam, he developed illicit contacts with his colleague, Radha. Ultimately, Radha became pregnant and she asked Raghu to marry her. Thereupon, he married Radha by way of registered marriage before the Registrar. His first wife, Jayalakshmi came to know of the second marriage of her husband with Radha and filed a complaint against both her husband and his second wife, Radha. Whether Raghu and his second wife, Radha are liable for any offence?

Under Section 494, I.P.C., whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine.

As Raghu, having his first wife Jayalakshmi living, married Radha, under Section 494, I.P.C., Raghu is liable for punishment and under Section 494 r/w. 109, I.P.C., Radha is liable for punishment.

351. Bhargava Rao married Sakunthala as per Hindu rites and caste custom. After the marriage they went to Kashmir for honeymoon. While they were in a hotel, some terrorists came and abducted Sakunthala. Bhargava Rao gave a complaint in the Police station. Though he waited for a month there Sakunthala could not be traced. Then he returned and started contacting the police of Kashmir now and then on telephone. He also personally went to Kashmir several times in search of his wife but she could not be traced. He waited for his wife with the hope that she would be traced but she could not be traced. No information was received from her or from the Police. As the whereabouts of his wife were not known for more than seven years, his parents insisted Bhargava Rao to remarry and they saw a suitable match. He agreed and even before contracting the marriage, he told the girl, Swathi about his first marriage and about the missing of his first wife. Having known about the first marriage of Bhargava Rao, Swathi agreed to marry and the marriage between Bhargava Rao and Swathi was validly performed as per caste custom. Sometime after the second marriage, his first wife Sakunthala returned. Having come to know of her husband's second marriage, she filed a complaint against her husband and his second wife. Whether they are liable for any offence?

Under Section 494, I.P.C., whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life time of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine. But there is an exception to this section. Under this exception, this section does not extend to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continuously absent from such person for the space of seven years and shall not have been heard of by such person as being alive within that time provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge.

So, Bhargava Rao and his second wife, Radha are protected under this exception. As the whereabouts of the first wife of

Bhargava Rao are not heard for more than seven years and as, before contracting the second marriage, Bhargava Rao informed his second wife, Radha of the real state of facts about his first marriage and about not knowing of the whereabouts of his first wife for more than seven years, though he contracted the second marriage with Radha, they are not liable for any offence under Section 494, I.P.C.

352. Prakash, a University Graduate, wrote a vulgar letter to Jayanthi, who was studying B.A. final year. That girl gave a complaint to the police against Prakash who wrote that letter, stating that he wrote that letter intending to insult her modesty. She also complained that Prakash used to make sounds or gestures intending to attract her. Is Prakash liable for any offence?

Under Section 509, I.P.C., whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture or exhibits any object, intending that such word or sound shall be heard or that such gesture or object shall be seen by such woman or intrudes upon the privacy of such woman shall be punished with simple imprisonment for a term which may extend to one year or with fine or with both.

As Prakash wrote a letter to Jayanthi containing indecent overtures and as he is also proved to have made sounds or gestures towards Jayanthi intending that such sounds and gestures shall be heard or seen by her, he is liable for the offence under Section 509, I.P.C.

353. Vikranth had studied B.A. He was addicted to bad vices like drinking. He spent most of his time by drinking, and he used to become senseless and also used to enter public places drunk and conduct himself in such a manner as to cause annoyance to other persons. As usual, one day he took Brandy and entered into a women's hostel, and called the inmates of the hotel by their names and abused them thereby causing annoyance to the persons staying in the hostel. Whether Vikranth is liable for any punishment?

Under Section 510, I.P.C., whoever, in a state of intoxication, appears in any public place or in any place which it is a trespass in him to enter, and there conducts himself in such a manner as to cause annoyance to any person shall be

punished with simple imprisonment for a term which may extend to twenty four hours or with fine which may extend to ten rupees or with both.

As Vikranth in a state of intoxication, having fully drunk brandy trespassed into the women's hostel premises and conducted himself in such a manner by abusing the inmates of the hostel by calling their names thereby causing annoyance to those inmates, he is liable for punishment under Section 510, I.P.C.

20

THE INDIAN TREASURE-TROVE ACT 1878

(Act No.6 of 1878)

- 354. *Duty of finder of any treasure and consequence of failure to discharge such duty*
- 355. *Procedure for disposal of treasure and the remedy of the owner of such treasure to claim it*
- 356. *Mode of disposal of treasure when no person other than the finder of such treasure has appeared*
- 357. *Effect of failure to give notice of the finding of treasure either by the owner or by the finder*
- 358. *Punishment for abetment in not giving information as to the finding of a treasure*

354. Ramanna Goud has purchased a house site, measuring 500 squares yards situated in Golconda area. He proposes to construct a building there and after getting the plan approved by the municipal authorities, starts the construction work. While pits are being dug to lay the foundation, some gold coins of historical interest, which are of the year 1859 are found. Ramanna Goud, the owner of the site, wants to take them but the Mason, who undertakes the construction of the house, claims a share in the gold coins but Ramanna Goud refuses to give him a share. Thereupon, that mason reported the matter to the police. Whether Ramanna Goud has committed any offence?

Under Section 4 of the Indian Treasure-Trove Act, 1878, whenever any treasure exceeding in amount or value ten rupees is found, the finder shall, as soon as practicable, give to the Collector notice in writing (a) of the nature and amount or approximate value of such treasure; (b) of the place in which it was found and (c) of the date of the finding and either deposit the treasure in the nearest Government treasury or give the Collector such security as the Collector thinks fit to produce the treasure at such time and place as he may from time to time require. Under Section 20 (1) of the said Act, if the finder or the purchaser of any treasure fails to give the notice or fails to make the deposit or give the security as required by Section 4, or alters, attempts to alter such treasure so as to conceal its identity, the share or interest in such treasure or any right to which the finder or the purchaser, as the case may be, would otherwise be entitled shall vest in the State Government. Under sub-section (2), for the offence of such failure or alteration, the finder or purchaser shall also be punishable with imprisonment which may extend to one year or with fine or with both.

So, if Ramanna Goud fails to give notice of the treasure, as required under Section 4, he is liable for punishment under Section 20 of the Indian Treasure-Trove Act, 1878.

355. Mohd. Abdul Rahim had a big garden in Falaknama. He converted that garden into house sites and they were sold. Kesava Rao purchased one such site and started construction of a house thereon. While digging foundations, he found some gold ornaments. Immediately he gave a notice, as required under Section 4 of the Indian Treasure-Trove Act, 1878, to the Collector. After receipt of the said notice, the Collector published a notification calling upon all persons claiming the treasure to appear personally or by agent before the Collector on a particular day. The owner of the garden Mohd. Abdul Rahim saw the notification in the paper and appeared before the Collector on the appointed day and put in a claim for the gold jewellery. Can the Collector give the gold jewels to Mohd. Abdul Rahim?

- * On the notice issued by the finder of the treasure under Section 4 of the Indian Treasure-Trove Act, 1878, the Collector shall publish a notification in the newspapers, as required under Section 5. Thereafter, under Section 7, on the day notified under Section 5, the Collector shall cause the treasure

to be produced before him and shall enquire as to and determine (a) the person by whom, the place in which and the circumstances under which such treasure was found; and (b) as far as possible the person by whom and the circumstances under which such treasure was hidden. If, upon such enquiry made under Section 7, the Collector sees reason to believe that the treasure was hidden within one hundred years before the date of the finding, by a person appearing as required by the said notification and claiming such treasure, or by some other person under whom such person claims, under Section 8 the Collector shall make an order adjourning the hearing of the case for such period as he deems sufficient to allow of a suit being instituted in the civil court by the claimant to establish his right. So Mohd. Abdul, who claims that he is the owner of the gold jewellery, has to file a suit in the civil court to establish his right, to the said gold jewellery.

356. Mohd. Jahinger purchased a house site situated in Falaknama area. After obtaining approval of the plan, he starts construction of the house. While digging foundations, some gold coins of historical interest, which are worth more than Rs. 50,000/- are found. Immediately, Mohd. Jahinger informs the Collector as required under Section 4 of the Indian Treasure-Trove Act, 1878. Thereupon, the Collector gets a notification published in the news papers and thereafter holds enquiry, under Section 7 of the said Act. But no one comes forward claiming rights over the said treasure. Thereupon, what has to be done by the Collector?

Under Section 9 of the Indian Treasure-Trove Act, 1878, if upon enquiry conducted by the Collector as contemplated under Section 7, he sees no reason to believe that the treasure was so hidden; or if where a period is fixed under Section 8, no suit is instituted within such period to the knowledge of the Collector or if such suit is instituted within such period and the plaintiff's claim is finally rejected, the Collector may declare the treasure to be ownerless. However, when no person other than the finder of such treasure has appeared as required by the notification published under Section 5 and claimed a share of the treasure as owner of the place in which it has been found, under Section 11 of the Indian Treasure-Trove Act, 1878, the Collector shall deliver such treasure to the finder thereof.

357. Syed Mohammad has a very old house in the old city of Hyderabad. During rainy season the wall on the eastern side collapses. While the debris is being removed, some gold coins are found which were hidden in the wall. Syed Mohammad does not inform the Collector as required under Section 4 of the Indian Treasure-Trove Act, 1878, but appropriates them for himself. The neighbour, Karim sees Syed Mohammad taking out gold coins from the demolished wall and advises him to report to the Collector but Syed Mohammad does not pay heed to his advice. Thereupon, Karim himself reports the same to the Collector. Whether he is entitled to any share in the treasure?

- * Under Section 16-A of the Indian Treasure-Trove Act, 1878, where the finder of any treasure or the owner of the place in which the treasure was found fails to give notice thereof to the Collector as required by Section 4, but some other person informs the Collector about the finding of such treasure, the Collector shall order the allotment of a share, not exceeding one-half in the treasure to such person.

358. Abdul Rehman got a house site in Golconda area. He proposed to construct a house thereon and he entrusted the construction of the house to a contractor. While the foundations were being dug, some gold ornaments hidden under the earth are found. The Contractor informed the owner of the plot Abdul Rehman. Both of them kept quiet without informing the collector as required under Section 4 of the Indian Treasure-Trove Act, 1878. Thus, the owner also abetted the contractor in not informing about the treasure to the Collector. Is the owner liable for any offence?

Under Section 21 of the Indian Treasure-Trove Act, 1878, if the owner of the place in which any treasure is found abets, within the meaning of the Indian Penal Code, any offence under Section 20, the share of such treasure, or the money in lieu thereof to which he would otherwise be entitled, shall vest in the Government and he shall also be punished with imprisonment which may extend to six months or with fine or with both.

So, the owner Abdul Rehman, who has abetted the contractor, in not giving information as required under Section 4 of the said Act, is liable for punishment under Section 21 and the share of such treasure shall vest in the Government.

INDIAN STAMP ACT, 1899

(Act No.2 of 1899)

359. Effect of deficit revenue stamps

359. (a) Lakshmayya, a resident of Palem village, had five acres of wet land. He raised paddy crop thereon and after harvesting the crop he sold some paddy and got Rs. 10,000/-. He was not a professional money lender. Jaggayya, one of his friends, approached him stating that he had to perform the marriage of his daughter within one month and that he applied for a loan from a co-operative Bank which would take more than one month to get sanctioned and so saying he requested Lakshmayya to give him a loan of Rs. 10,000/- and that he would return the same as soon as he receives his loan from the Co-operative Bank. Lakshmayya agreed and gave Rs. 10,000/- to Jaggayya who executed a promissory note with his own hand writing and got it attested by two persons. However, as requisite revenue stamps were not available at that time and only one stamp of 10 paise was available, it was affixed on the promissory note. Jaggayya did not repay the amount as promised.

(b) Srikanth, a Government employees working in Fisheries Department, required money for admission of his son in Engineering College. He approached his friend, Somayya and saying that would repay the amount as soon as he receives his G.P.F. loan, requested for a loan of Rs. 10,000/-. Somayya was convinced and gave the amount of Rs. 10,000/-. However, by abundant caution, Somayya took a promissory note from Srikanth. The promissory note was written by Srikanth in his own hand writing and obtained the signatures of two witnesses. He has affixed 50 paise revenue stamp on the promissory note. He also did not pay the amount under the promissory note as promised.

What is the effect of two promissory notes? Can Lakshmayya under the first promissory note and Somayya under the second promissory note, get the amounts?

Under Article 49 (a) (iii) of the Indian Stamp Act, in the case of promissory notes when the amount exceeds Rs. 10,000/- a revenue stamp worth 25 paise has to be affixed. In the case of the promissory note executed by Jaggayya in favour of Lakshmayya, as referred to in Problem No. (a), as the revenue stamp affixed is only 10 paise, Lakshmayya cannot get the amount through a Court, as the suit based on insufficiently stamped promissory note will be dismissed.

In the case of the promissory note executed by Srikanth in favour of Somayya, as referred to in problem No. (b), as the stamp affixed is 50 paise as against 25 paise, there would not be any legal hurdle and the suit based on the second pronote will be decreed, provided the suit is instituted within three years from the date of execution of the promissory note as required under Art-36 of the Limitation Act.

THE LAND ACQUISITION ACT, 1894

(Act No.1 of 1894)

- 360. *Sending of notice of acquisition to the person interested to his last known residence*
- 361. *Period during which proceedings are stayed by an order of Court to be excluded in computing the period of two years referred to in Section 11-A*
- 362. *Special powers of Collector in cases of urgency*
- 363. *Excess compensation paid to be recovered as arrears of land revenue*
- 364. *Rights of the owners, dissatisfied with the quantum of compensation awarded by the Collector*
- 365. *Compensation for standing crops, coconut trees, remaining pieces of land severed and injuriously affected, etc.*
- 366. *Probable increase of value of acquired land consequent upon the purpose for which it was acquired*
- 367. *Amount awarded by the Court shall not be less than the amount awarded by the Collector*
- 368. *Rights of claimants who have not preferred an appeal when compensation is enhanced on the appeal preferred by other claimants in the same notification*
- 369. *Settlement of dispute as to the apportionment of compensation*
- 370. *Acquisition of land for temporary occupation*
- 371. *Consequences of obstruction by any person in doing any of the acts authorised by Section 4 or Section 8*

360. The Government proposed to construct a housing colony for the Scheduled Caste/Scheduled Tribe and Backward Class People. For that purpose, 20 acres of land, situated at the outskirts of the village, was sought to be acquired. Accordingly, a notification under Section 4 (1) of the Land Acquisition Act, 1894, was published in the official Gazette and in two daily news papers expressing that the Government proposes to acquire the

above said land of 20 acres and giving notice to the persons interested in the said land, to appear either personally or through their agents before the officer authorised in that behalf and claim compensation, or to file their objections. After considering the objections and after conducting enquiry under Section 5-A of the Act, declaration under Section 6 was also made. Thereafter, the said land was acquired for the above said purpose. Out of the above said 20 acres of land, two acres belong to Bhaktavatsalam, who was not residing in the village where the land was situated and he was staying at Delhi where he was working in a Central Government Office. As he was in Delhi, he left his land fallow and there was no one to look after his land. He did not receive any notice from the authorised officer or the Collector. Whether he is entitled to notice and if so, what is the mode of service of notice on such person?

Under sub-section (4) of Section 9 of the Land Acquisition Act, 1894, in case any person so interested resides elsewhere and has no such agent, the notice shall be sent to him by post in a letter addressed to him at his last known residence, address or place of business and registered under Section 28 and 29 of the Indian Post Office Act, 1898.

361. Land admeasuring 50 acres was acquired for the purpose of construction of houses to economically backward class people. Notification under Section 4 (1) of the land Acquisition Act, 1894, was made in the official gazette and also in two local news papers. Enquiry as contemplated under Section 5-A of the Act was also conducted and all the formalities were completed within two years period and when the Collector was about to pass an award, one of the land holders, went to the High Court questioning the acquisition and obtained stay. The stay continued for more than one year and in the meantime the time limit of two years prescribed under Section 11-A of the Act for passing the award lapsed. In such cases, what is the mode of computation of the two years period prescribed under Section 11-A of the Act?

Under the explanation to Section 11-A of the Land Acquisition Act, 1894, in computing the period of two years referred to in Sec. 11-A, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a court shall be excluded. So, in the above case, as the proceedings were stayed by the High Court, that period

covered by stay shall be excluded from computing the period of two years within which the Collector shall make an award under Section 11. If that period is excluded, it is deemed that the award was passed within time, and so, such award cannot be questioned on the ground that no award is made within the prescribed period.

362. There were floods in Godavari river and during the floods, the railway track got washed away and the G.T. road also eroded. So, diversion was necessitated and for that purpose, additional land was needed, urgently. Therefore, the Collector, without initiating regular procedure as contemplated under the Land Acquisition Act, issued a notice under Section 9 (1) for taking possession of 2 acres of land belonging to Nethaji. There was standing groundnut crop on the land and there were some fruit yielding trees also. Nethaji immediately filed a writ petition in the High Court questioning the acquisition by the Government which has no power to acquire the said land without following the due procedure as contemplated under the Land Acquisition Act. In the writ petition, after receipt of notice, the Collector filed a counter-affidavit stating that in cases of urgency, he (the Collector) can take possession of any land, needed for public purpose, after the expiration of fifteen days from the publication of the notice. Is the contention of the Collector correct and what is the procedure of taking possession of acquired land in cases of emergency?

Section 17 of the Land Acquisition Act, 1894, deals with the special powers in cases of urgency. Under sub-section (1), in cases of urgency, whenever the appropriate Government so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from publication of the notice mentioned in Section 9, sub-section (1), take possession of any land needed for public purpose. Such land shall thereupon vest absolutely in the government, free from all encumbrances.

Under sub-section (2), whenever, owing to any sudden change in the channel of any navigable river or other unforeseen emergency, it becomes necessary for any Railway Administration to acquire the immediate possession of any land for the maintenance of their traffic or for the purpose of

making thereon a river-side or ghat station or of providing convenient connection with or access to any such station or the appropriate Government considers it necessary to acquire the immediate possession of any land for the purpose of maintaining, any structure or system pertaining to irrigation, water supply, drainage, road communication or electricity, the Collector may, immediately after the publication of the notice mentioned in sub-section (1) and with the previous sanction of the appropriate Government, enter upon and take possession of such land, which shall thereupon vest absolutely in the Government free from all encumbrances.

Provided that the Collector shall not take possession of any building or part of a building under this subsection without giving to the occupier thereof at least forty-eight hours' notice of his intention so to do, or such longer notice as may be reasonably sufficient to enable such occupier to remove his movable property from such building without unnecessary inconvenience.

Under sub-section (3), in every case under either of the preceding sub-sections, the Collector shall at the time of taking possession offer to the persons interested compensation for the standing crops and trees, if any, on such land and for any other damage sustained by them caused by such sudden dispossession and not excepted in Section 24; and, in case such offer is not accepted, the value of such crops and trees and the amount of such other damage shall be allowed for in awarding compensation for the land under the provisions.

Under sub-section 3-A, before taking possession of any land under sub-section (1) or sub-section (2), the Collector shall, without prejudice to the provisions of sub-section (3), (a) tender payment of eighty per centum of the compensation for such land as estimated by him to the persons interested entitled thereto and (b) pay it to them unless prevented by some one or more of the contingencies mentioned in Section 31 sub-section (2), and where the Collector is so prevented, the provisions of section 31, sub-section (2) shall apply as they apply to the payment of compensation under that section.

Under sub-section 3-B, the amount paid or deposited under sub-section (3-A) shall be taken into account for determining the amount of compensation required to be tendered under

section 31 and where the amount so paid or deposited exceeds the compensation awarded by the Collector under Section 11, the excess may, unless refunded within three months from the date of the Collector's award, be recovered as an arrear of land revenue.

So, under sub-section (2) of Section 17, the Collector is perfectly justified in acquiring and taking possession of the two acres of land belonging to Nethaji, as the purpose for which the said land was acquired was proved to be urgent. However, before taking possession of the said land, he shall tender payment of 80% of the compensation.

363. Under emergency provisions, land of Sudhakar was acquired and possession was taken for purpose of laying railway track, which was washed away on account of floods. Before taking possession of the land, 80% of the compensation as required under sub-section (3-A) (a) of Section 17 of the Land Acquisition Act, was paid to the landlord, Sudhakar. But ultimately, after passing the regular award, it was found that a sum of Rs. 10,000/- was paid in excess of the eligible amount. Whether it can be recovered from the landlord and if so, how to recover it?

- * Under sub-section 3-B of Section 17 of the Land Acquisition Act, 1894, if the amount paid or deposited towards compensation exceeds the compensation awarded by the Collector under Section 11, the excess may, unless refunded within three months from the date of the Collector's award, be recovered as an arrear of land revenue. So, the excess amount of Rs. 10,000/- paid to Sudhakar, the landlord shall be refunded within three months from the date of the Collector's award. Otherwise, it will be recovered from him as an arrear of land revenue.

364. An extent of 50 acres of land, belonging to 20 ryots of Ramahbadrapuram village was acquired by the Collector for the purpose of laying a ring road and after completing all the formalities, the Collector passed an award under Section 11 of the Land Acquisition Act, 1894, awarding compensation of Rs. 5,000/- per acre as against the claim of the owners of the said land at the rate of Rs. 20,000/-. They are dissatisfied with the quantum of compensation granted by the Collector. What can they do?

Under Section 18 of the Land Acquisition Act, 1894, under sub-section (1), any person interested, who has not accepted the award, may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of land, the amount of the compensation, the person to whom it is payable or the appointment of the compensation among the persons interested. Under sub-section (2), the application shall state the grounds on which objection to the award is taken. Under the proviso (a) to Sec. 18, every such application shall be made if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award; and (b) in other cases, within six weeks of the receipt of the notice from the Collector under Section 12, sub-section (2) or within six months from the date of the Collector's award, whichever period shall first expire.

So, if the ryots are dissatisfied with the quantum of compensation granted by the Collector for the acquisition of their lands, they can make an application under section 18 to the Collector for referring the matter for the determination of the Court, and the Collector will refer the matter to the Civil Court furnishing the information as required under Section 19 and thereafter the Court will determine the compensation under Section 23 of the Act.

365. Bhavani Prasad has dry land, measuring Ac. 5-00. The Government proposed to lay a bypass road for the passage of lorries, etc., and for that purpose the Government acquired Ac. 4-50 cents of dry land belonging to Bhavani Prasad along with the lands of other land owners in the vicinity. Sec.4 (1) notification was published in the official gazette and also in two local news papers. Thereafter, enquiry under Sec. 5-A was also conducted and declaration under Section 6 of the Land Acquisition Act, 1894, was also made. Ultimately, after following the due procedure as contemplated under the Land Acquisition Act, 1894, the land, measuring Ac. 4-50 cents was acquired. At that time, there was standing groundnut crop on the said land and also coconut trees on the bunds. Further, as the Government acquired Ac. 4-50 cents of Bhavani Prasad's land, the remaining Ac. 0-50 cents of land became a very narrow bit and it was useful for nothing as it would be adjacent to the proposed by pass road

and it was a narrow piece. He was also having his bungalow on the said land under acquisition and because of the acquisition, he had to change his residence. Whether he can claim compensation for the standing crop, trees and the Ac. 0-50 cents of land which has been injuriously affected and also for the change of his residence?

Under Section 23 of the Land Acquisition Act, 1894, in determining the amount of compensation to be awarded for land, acquired, the court shall take into consideration (1) the market-value of the land at the date of the publication of the notification under Section 4 sub-sec. (1); (2) the damage sustained by the person interested by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof; (3) the damage, if any, sustained by the person interested at the time of the Collector's taking possession thereof; (3) the damage, if any, sustained by the person interested at the time of the Collector's taking possession of the land, by reason of severing such land from his other land; (4) the damage, if any, sustained by the person interested at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings; (5) if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change; and (6) the damage, if any, bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration under Section 6 and the time of the Collector's taking possession of the land. So, under Section 23, the claimant Bhavani Prasad, can claim compensation, besides the market value of the land as on the date of publication of the notification under Section 4 (1), for the standing crops and coconut trees, for the remaining piece of land severed and injuriously affected and for the change of his residence and while determining the amount of compensation, the court will take into consideration the above aspects.

366. The Road Transport Authority requested the Government to acquire 20 acres of land at the outskirts of Palamaneru for the construction of a bus depot. Accordingly, the Government issued

a notification under Section 4 (1) of the Land Acquisition Act, 1894, and followed the due procedure as contemplated under the Land Acquisition Act and took possession of the land. Out the 20 acres of land, 5 acres belonged to Yellaiah. While claiming the compensation, Yellayya submitted his claim for compensation stating that the value of the land will appreciate on account of the proposed bus depot being constructed. The value of the neighbouring lands will also increase on account of the construction of the proposed bus depot and that he would be deprived of the benefits and so, he claimed that he was entitled to enhanced compensation for the land acquired by the Government. Whether he is entitled to enhanced compensation taking into account the future increase of the value of the land on account of the bus depot that is being constructed on the land acquired?

Under Section 24 of the Land Acquisition Act, 1894, while determining the compensation for the lands acquired by the Government, the court shall not take into consideration any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired and also any increase to the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put. So, Yellaiah cannot ask the court to take into consideration the increase to the value of the land acquired or other land in the vicinity that is likely to accrue consequent to the construction of the bus depot on the acquired land.

367. The Government has acquired 100 acres of land in Saluru for the purpose of construction of houses for Scheduled Caste/ Scheduled Tribes and other backward class people. Out of the said land, 20 acres belonged to Gourunaidu. After completing all the formalities for the acquisition of the land, possession also has been taken. Thereafter, the Collector has passed an award fixing the compensation at the rate of Rs. 25,000/- per acre after duly taking into account the value of the land in and around the acquired land. Having been dissatisfied with the quantum of compensation, the claimants got the matter referred to the Civil Court under Section 18 of the Land Acquisition Act. The Civil Court, while determining the compensation finds that the Collector took into consideration the value of small bits of lands in the vicinity and holding that they cannot reflect real value, the Court held that the compensation granted by the Collector is on

the high side. Whether the Civil Court can reduce the compensation granted by the Collector?

- * Under Section 25 of the Land Acquisition Act, 1894, the amount of compensation awarded by the Court shall not be less than the amount awarded by the Collector under Sec. 11. So, even though the Court comes to the conclusion that the amount awarded by the Collector is on the high side, it cannot reduce the compensation awarded by the Collector as under Section 25, the amount of compensation awarded by the Court shall not be less than the amount awarded by the Collector.

368. Land belonging to ten persons in Sankavaram village was acquired by the Government for the purpose of providing house sites to the Scheduled Caste, Scheduled Tribe and Back Ward Class people. Land acquisition proceedings were initiated. The prevailing rate per acre in that area as on the date of Section 4 (1) notification was about Rs. 10,000/-. After considering the sale extracts and other documents filed by the ten claimants, the Land Acquisition Officer awarded the compensation at the rate of Rs. 5,000/- per acre. Having been dissatisfied with the quantum of compensation and as there was no necessity to pay court fee on compensation, the ten claimants filed an application to refer the matter to the Civil Court under Section 18 of the Land Acquisition Act. The Civil Court considered the matter in the light of oral and documentary evidence and ultimately enhanced the compensation to Rs. 10,000/- per acre. Originally, the claimants claimed compensation at the rate of Rs. 25,000/-. As heavy Court fee has to be paid in case of an appeal being filed in the High Court, nine persons have dropped out and did not file any appeal to the High Court. However, one person, who has the capacity to pay the court fee, filed an appeal in the High Court. The High Court, considering entire material on record, enhanced the compensation from Rs. 10,000/- per acre to Rs. 20,000/- per acre, giving all the statutory benefits. Then the remaining nine persons felt that they would have also filed appeals so that they would also have got the compensation at Rs. 20,000/- and repented for not pursuing the matter. Are the remaining nine persons entitled to compensation at Rs. 20,000/- per acre?

- * Yes. Under Section 28-A of the Land Acquisition Act, 1894, where the Court allows to the applicant any amount of compensation, in excess of the amount awarded by the

Collector under Section 11, the persons interested in all the other land covered by the same notification under Section 4 (1) and who have not filed an appeal to the High Court, may, notwithstanding that they had not filed any appeal, by written application to the Collector within three months from the date of the award of the court, require that the amount of compensation payable to them may be re-determined on the basis of the amount of compensation awarded by the High Court and on receipt of such an application, the Collector shall make an award determining the amount of compensation payable to the application.

369. Ranganayakulu has 10 acres of land in Sivarampalli. The Government acquired that land and also some more lands from the neighbouring land owners for the purpose of laying a by pass road. After following the due procedure as contemplated under the Land Acquisition Act, 1894, possession of the land was taken. At the time when the award was about to be passed, Ranganayakulu died and there was a dispute as to the legal representatives of Ranganayakulu. He had a son, Ramarao and he was claiming that he was the sole L.R. of the deceased, Ranganayakulu. Ranganayakulu had daughter, Ramadevi. She also claimed a share in the compensation stating that her father had bequeathed half share in the said land to her under a will and she produced the will, which the son disputed as a forged one. Thus, there is a dispute with regard to the legal representative of the deceased, Ranganayakulu and consequently, it is in doubt to whom the compensation has to be paid. In those circumstances, what has to be done by the Collector?

Under Section 30 of the Land Acquisition Act, 1894, when the amount of compensation has been settled under Section 11, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof is payable, the Collector may refer such dispute to the decision of the Court.

As there is a dispute as to whom the compensation of Ranganayakulu has to be paid as two persons are claiming the compensation, the Collector may refer the dispute to the decision of the Court.

370. There was a big earthquake in Zaheerabad. Due to the said earth quake, most of the houses in that town collapsed and

several persons became homeless. The Government took up the cause of providing them some temporary shelter. So, the Government acquired 10 acres of land situated on the outskirts of Zaheerabad town for constructing temporary sheds for the residence of the victims of earth quake. The Collector gave notice in writing to the persons interested in that land informing them that the said land was acquired for a period of two years for providing temporary sheds to the victims of earth-quake and in consideration thereof, the Collector fixed compensation of Rs. 1,000/- per acre towards compensation for the two years period. The owners of the land were dissatisfied with the quantum of compensation saying that they were raising dry crops and commercial crops on the land acquired and if they raise those crops, they will get more than the amount granted by the Collector. What has to be done in case of insufficiency of compensation?

Under sub-section (1) of Section 35 of the Land Acquisition Act, 1894, in case of necessity, the Government can direct the Collector to procure certain land for a temporary occupation not exceeding three years. Under sub-section (2), the Collector shall give notice to the persons interested and pay them compensation. Under sub-section (3), in case the Collector and the persons interested differ as to the sufficiency of the compensation or apportionment thereof, the Collector shall refer such difference to the decision of the Court. So in the above case, as the claimants are dissatisfied with the quantum of compensation, under sub-section (3) of Section 35, the Collector shall refer the matter to the decision of the Court.

371. 100 Acres of land was acquired for digging out a canal for getting drinking water from a river. Out of the said 100 acres of land, Ramanna lost 5 acres, Seethanna lost 10 acres and Narasunaidu lost 8 acres. Due to the acquisition, they became landless as the only land they possessed was taken by the Government. They were very much against the acquisition of that land. They tried to stop acquisition in several ways but they did not succeed in their attempts. Digging of the canal was started by a Contractor. While the land of the above three persons was being dug, they came and wilfully obstructed the workers from digging the canal and also filled up the pits and damaged the material and also displaced the marks put for digging the canal. Whether they are liable for any punishment?

Under Section 46 of the Land Acquisition Act, 1894, whoever wilfully obstructs any person in doing any of the acts authorised by Section 4 or Section 8 or wilfully fills up, destroys, damages or displaces any trench or mark made under Section 4, shall, on conviction before a Magistrate, be liable to imprisonment for any term not exceeding one month or to fine not exceeding five hundred rupees or to both.

As Ramanna, Seethanna and Narasunaidu have wilfully obstructed the workers from digging the canal authorised by Section 4 notification and also wilfully filled up the dug canal pits and destroyed the material and displaced the marks made for digging the canal, they are liable for punishment under Section 46 of the Land Acquisition Act, 1894, and they are liable to imprisonment for any term not exceeding one month or to fine not exceeding Rs. 500/- or to both.

23

THE MEDICAL TERMINATION OF PREGNANCY
ACT, 1971

(Act No.34 of 1971)

- 372. *Pregnancy of a woman which causes anguish-Remedy*
- 373. *Termination of pregnancy of a woman, who has not attained the age of eighteen years or is a lunatic*
- 374. *Termination of pregnancy when its continuance would involve risk to the life of the pregnant woman or of grave injury to her physical or mental health*
- 375. *Termination of pregnancy as a result of failure of any device used by either of the couple for limiting the number of children*

372. Kalyani, a Gold Medalist from Osmania University, in M.Sc., was selected as a Lecturer in a Junior College. Pursuant to the appointment order, she joined duty as a Lecturer and she was staying in a Working Women's hostel. In that college, there was student, Gireesh who failed several times in lower classes and ultimately at the age of about 20 years he was studying Inter.

He being aged about 20 years, used to control the class claiming himself to be the leader. Influenced by movies, he developed an idea of committing rape on the lecturer, Kalyani. He used to cut jokes with her and sometimes used to misbehave with her. She ignored all those acts. He used to observe the movements of Kalyani. One day, when Kalyani was returning to the hostel at about 9.00 p.m., Girish along with his associates waylaid her and took her to his room and had intercourse with her against her will and consent. As she is a respectful lady, she did not give any report nor did she tell about this to anybody. But to her misfortune, after three months, she realised that she was running 3rd month of pregnancy. She apprehended that she could not legally terminate the pregnancy or undergo abortion. What is to be done by her?

As the pregnancy is alleged by the pregnant lady to have been caused by rape and as the anguish caused by such pregnancy is presumed to constitute a grave injury to the mental health of the pregnant woman, the pregnancy of Kalyani can be terminated by a registered medical practitioner, under Section 3 (2) (b) of the Medical termination of Pregnancy Act, 1971.

373. Bhanu Prakash and Revathi are husband and wife and they have two daughters. Revathi became pregnant. After fifth month of her pregnancy, her husband Bhanu Prakash pressed her to undergo S.D. Test (Sex-Determination Test) to find out the sex of the child in the womb as they are already having two daughters and does not want to have a third daughter. Ultimately, at the pressure of the husband, Revathi yielded to his desire and underwent S.D. Test and it was determined by the doctors that the child in the womb may be a female child. Thereupon, Bhanu Prakash insisted his wife to undergo abortion. Whether the consent of the wife is necessary or not?

Under Section 3 (4) of the Medical Termination of Pregnancy Act, 1971, no pregnancy of a woman who has not attained the age of eighteen years, or, who having attained the age of eighteen years, is a lunatic, shall be terminated except with the consent in writing of her guardian. And as per clause (b) of sub-section (4) of Section 3, no pregnancy shall be terminated except with the consent of the pregnant woman. In the above case, Revathi is not below 18 years but she is a major, aged about 24 years and she is not a lunatic. So, her

consent is necessary to terminate her pregnancy. The husband has no right to prevail upon her to undergo abortion.

374. Somayya married Seethamma. For about ten years they had no children. They consulted many doctors, used several medicines, visited many temples and performed pujas. At last, after ten years, she became pregnant. When she was running fourth month of her pregnancy, she felt some uneasiness and so she approached a lady doctor, Dr. Saritha, a senior Gynaecologist. The doctor while confirming the pregnancy advised her to undergo some tests. Accordingly, she underwent the required tests and brought the reports. Dr. Saritha perused the reports and found that the child developing in the womb was in a disorderly position and in fact, she opined that continuance of the pregnancy would involve a risk to her life or of grave injury to her physical or mental health. In these circumstances, whether the pregnancy can be validly terminated?

- * When the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health, under Section 3 (2) (b) (i) of the Medical Termination of Pregnancy Act, 1971, the wife is entitled to terminate the pregnancy by a registered medical practitioner.

375. Surender and Kavitha are husband and wife and both are employees. Surender is working as a Welfare Officer in Social Welfare Department and Kavitha is working as a teacher in a High School. They wanted to limit their family and so, they used to use all devices or methods for the purpose of limiting the number of children. But those methods or devices proved to be futile and ultimately, Kavitha became pregnant. Whether the pregnancy can be terminated?

- * Under Explanation II to clause (b) of sub section (2) of Section 3 of Medical Termination of Pregnancy Act, 1971, where any pregnancy occurs as a result of failure of any device or method used by any married woman or her husband for the purpose of limiting the number of children, the anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman. So, such a pregnancy can be terminated by a Registered Medical Practitioner.

THE MOTOR VEHICLES ACT, 1988

(Act No.59 of 1988)

- 376. *Age limit for driving motor vehicles*
- 377. *Revocation of driving licence on grounds of disease or disability*
- 378. *Power of licensing authority to disqualify from holding a driving licence or revoke such licence*
- 379. *Consequences of failure of the owner of a motor vehicle to intimate his new address to the concerned registering authority*
- 380. *Restriction of hours of work of drivers*
- 381. *Liability to pay compensation on the principle of 'No fault'*
- 382. *Permanent disablement and compensation on the principle of 'No fault'*
- 383. *Punishment for permitting a person, who does not possess any driving licence, to drive a motor vehicle;*
Punishment for driving a motor vehicle in a public place by a person less than 18 years of age and without having a driving licence; and Punishment for running the motor vehicle without an insurance policy
- 384. *Limits of liability of Insurance Company*
- 385. *Effect of not covering valid insurance policy at the time when the vehicle involved in the accident*
- 386. *Death of owner of goods travelling in a motor vehicle*
- 387. *Loss of dependency to be taken into consideration while granting compensation*
- 388. *Dependants' right to claim compensation for the successive deaths of deceased*
- 389. *Effect of non-renewal of insurance policy after its expiry*
- 390. *Compensation in case of hit and run motor accident*
- 391. *Period of limitation for filing claim petitions and power of the Tribunal to condone delay*
- 392. *Addition of real owner of a motor vehicle involved in an accident*

376. Pradeep Kumar is the owner of Aruna Automobile Workshop. Gradually he flourished well in his business and ultimately becomes a Distributor of Maruthi Cars. Janardhan is a Chartered Accountant and he joins as an Accounts Officer in that Aruna Automobile workshop. Narayana Singh is a senior-most mechanic and he becomes the Manager of that Work Shop. All the three persons, viz., the owner Pradeep Kumar, Accounts Officer Janardhan and Narayana Singh, Manager are having one son each. The son of the owner is Kiran Kumar, aged 15 years, the son of the Accounts Officer is Jagadeesh Kumar aged about 17 years and the son of the Manager is Gopal Singh, aged 19 years. As all the three are in motor field, their respective sons want to learn motor driving and for that purpose, they have applied for driving licence to drive cars. Whether driving licences can be granted to the three?

- Under Section 4 of the Motor Vehicles Act, 1988, no person under the age of eighteen years shall drive a motor vehicle in any public place. A motor cycle without gear may be driven in a public place by a person after attaining the age of sixteen years. Under sub-section (2) of Section 4, no person under the age of twenty years shall drive a transport vehicle in any public place and under sub-section (3), no learner's licence or driving licence shall be issued to any person to drive a vehicle of the class to which he has made an application, unless he is eligible to drive that class of vehicle under Section 4. So, Kiran Kumar, the son of the owner, who is aged 15 years and Jagadeesh Kumar, the son of the Accounts Officer, who is aged 17 years are not entitled to any driving licence as they are under the age of eighteen years. However, Jagadeesh Kumar, aged 17 years, can be granted a licence to drive a motor cycle without gear. Gopal Singh, the son of the Manager, who is aged about 19 years, can be granted a licence to drive a motor vehicle. However, he shall not be granted a licence to drive a transport vehicle as he is under the age of 20 years.

377. Amar Singh is working as a Driver in the A.P. State Road Transport Corporation. He is a senior driver, aged about 50 years. By virtue of his seniority and experience, he is entrusted with night express buses, running on long routes. After some time complaints started coming and noted in the complaint book maintained in the bus to the effect that the driver is not able to

drive the vehicle properly during dark nights. Thereupon, the Corporation sends the driver for medical examination. The doctor who examined the driver, Amar Singh certified that he is suffering from coloured blindness and is having defective eye sight. Whether the driving licence of the driver Amar Singh can be revoked in the above circumstances?

- * Under Section 16 of the Motor Vehicles Act, 1988, any licensing authority may at any time revoke a driving licence or may require, as a condition of continuing to hold such driving licence, the holder thereof to produce a medical certificate in the same form and if the licensing authority has reasonable grounds to believe that the holder of the driving licence is, by virtue of any disease or disability, unfit to drive a motor vehicle and where the authority revoking a driving licence is not the authority which issued the same, it shall intimate the fact of revocation to the authority which issued that licence. So, under this section, as the licensing authority has satisfied basing on the medical certificates that the driver Amar Singh is, by virtue of his defective eye sight, unfit to drive a motor vehicle, the licensing authority may revoke the driving licence.

378. Prakasa Rao was having a driving licence for driving heavy motor vehicles. He was appointed as a lorry driver by the owner of the lorry. He worked for some time honestly and got the appreciation of the owner. Thereafter, he made friendship with the drivers of other lorries and gradually got habituated to drinking. He used to drive the lorry after drinking. He was driving the lorry rashly and negligently and several times caused minor accidents. Without the knowledge of the owner of the vehicle, he indulged in transporting Narcotic Drugs. He was also a addict to narcotic drugs. Whether the driving licence of the driver, Prakasa Rao can be revoked as he indulged in the above illegal acts?

Under Section 19 of the Motor Vehicles Act, 1988, if the licensing authority is satisfied, after giving the holder of a driving licence an opportunity of being heard, that he is a habitual criminal or a habitual drunkard; or is a habitual addict to any narcotic drug or psychotropic substance within the meaning of the Narcotic Drugs and Psychotropic Substances Act, 1985, or is using or has used a motor vehicle in the commission of a cognizable offence or has by his

previous conduct as driver of a motor vehicle shown that his driving is likely to be attended with danger to the public, the licensing authority may disqualify that person for a specified period for holding or obtaining any driving licence to drive all or any classes or descriptions of vehicles or revoke any such licence. So, if it is proved that Prakasa Rao, the driver has been committing the above acts, the licensing authority can revoke the driving licence after giving the holder of the driving licence an opportunity of being heard.

379. Dr. Rajgopal is working as a Civil Assistant Surgeon in Government Hospital, Chittoor. His wife is also a doctor. Both of them specialised in Diabetes. On the advice of elders and friends, Dr. Rajgopal resigned the Government post and migrated to Hyderabad along with his wife and opened 'Vijaya Nursing Home'. While they were in Chittoor, they used to have one Maruthi car, registered at Chittoor R.T.O. Office having his residential address at Chittoor. After they shifted their residence from Chittoor to Hyderabad, they did not inform the change of residence to the registering authority. After one year of their shifting to Hyderabad, while Dr. Rajgopal was going in his car on account of traffic violation, the traffic police stops his car and asks for the certificate of registration and driving licence, etc. On verification, it is found that the place of residence is noted in the certificate as Chittoor and new address is not entered in the certificate. Whether the Doctor, who is the owner of the car, is liable for any penal action for not intimating his new address to the concerned registering authority within 30 days of the change?

- * Under Section 49 of the Motor Vehicles Act, 1988, under sub-section (2), if the owner of a motor vehicle fails to intimate his new address to the concerned registering authority within thirty days of any such change of address, the registering authority may, having regard to the circumstances of the case require the owner to pay in lieu of any action, such amount not exceeding one hundred rupees. So, as the doctor has not intimated the new address to the registering authority within thirty days of such change, the registering authority can require the owner of the car to pay such amount not exceeding Rs. 100/-.

380. There is a Bhargava Transport Service which is dealing in transport of goods. It has branches all over India and they are

operating several lorries. One day, one driver Nutan Singh was asked to driver the lorry from Hyderabad to Bombay carrying the goods. He was not provided with any additional driver. When the driver insisted for an additional driver, the owner asked him to avail half an hour rest for every five hours journey. What is the position with regard to hours of work of drivers?

Under Section 91 of the Motor Vehicles Act, 1988, no person shall cause or allow any person who is employed by him to work for more than five hours before he has had an interval or rest of at least half an hour; or for more than eight hours in one day or for more than forty eight hours in any week, and no person shall work or cause or allow any other person to work outside the hours fixed or recorded for the work of such persons. So, the driver can avail rest of at least half an hour when he works for more than five hours.

381. Bangaru Raju and Sivarama Raju are brothers. Bangaru Raju married Lakshmiprasunamba and had no children. Sivarama Raju married Kanaka Durga and they had two sons and one daughter. Both the brothers partitioned their joint family properties. The joint family, possess two houses, situated opposite to each other, divided by a 24' wide road. Bangaru Raju could not flourish in his business and he incurred heavy loss and he sold most of his properties. Sivarama Raju, the other brother, on the other hand, improved his properties and constructed a multi-storeyed building. Bangaru Raju felt it very difficult to eke out his livelihood. As he was not providing sufficient food and clothing to his wife, there were frequent quarrels between the couple. Bangaru Raju gave one room in his house for rent to an intermediate student, for a rent of Rs. 50/- p.m. One day as usual quarrel ensued between Bangaru Raju and his wife and in that quarrel Lakshmi Prasunamba, the wife of Bangaru Raju remarked her husband, to the hearing of the intermediate student, that even though 100 sovereigns were placed on his head, no one will purchase him even for a single pie whereas even if a pie was kept on his brother's head he will be sold for 100 sovereigns. Bangaru Raju remarked that even though her name was Lakshmi, they are not having a single pie. Both were not having mental peace. One day at about noon, Bangaru Raju after quarreling with his wife suddenly rushed out of his house on to the main road without watching the oncoming vehicle which hit him and he died on the spot. Thereupon, his wife Lakshmi Prasunamba filed a petition

before the Motor Accidents Claims Tribunal claiming a compensation of Rs. 1 lakh, exaggerating the financial income of her husband. However, the Tribunal dismissed the petition holding that the driver of the lorry was not at fault and that the deceased, Bangaru Raju alone was at fault. Whether the petitioner Lakshmi Prasunamba, the wife of the deceased Bangaru Raju is entitled to any other compensation?

Under Section 140 of the Motor Vehicles Act, 1988, where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle, the owner of the vehicle shall jointly and severally be liable to pay a compensation of Rs. 25,000/- in respect of death and a compensation of Rs. 12,000/- in respect of permanent disablement and in such cases the claimant shall not be required to plead and establish that the death or permanent disablement and in such cases the claimant shall not be required to plead and establish that the death or permanent disablement was due to any wrongful act, 'neglect or default of the owner.

So, since Sec. 140 gives right to claim compensation under 'no fault liability', Lakshmi Prasunamba, the wife of the deceased, Bangaru Raju can claim compensation under 'No fault liability' and she is entitled to Rs. 25,000/- as fixed compensation for the death of her husband and the owner is liable to pay the said amount and if there is a valid insurance policy for the offending vehicle, the insurance company is liable to pay that amount.

382. When Shiva, aged about 40 years, was walking on the road, a lorry came in the opposite direction at a high speed without blowing any horn and dashed against Shiva and on account of the said accident, Shiva received an injury to his left eye, another injury on his left cheek and also to his left leg resulting in amputation and disfiguration of his face. Whether Shiva is entitled to any compensation?

Under Section 142 of the Motor Vehicles Act, 1988, permanent disablement of a person shall be deemed to have resulted from an accident of the nature referred to in sub-section (1) of Section 140, if such person has suffered by reason of the accident any injury or injuries involving permanent privation of the sight of either eye or the hearing of either ear or

privation of any member or joint or destruction or permanent impairing of the powers of any member or joint or permanent disfiguration of the head or face. So, as Shiva suffered from permanent disablement as he lost his left eye, permanent disfiguration of the face and also amputation, he can claim compensation by filing a petition in Motor Accidents Claims Tribunal.

Under Section 140, he is entitled to a fixed compensation of Rs. 12,000/- under no fault liability. If he can prove that the accident occurred on account of the rash and negligent driving of the driver of the vehicle, he will be entitled to more compensation and the amount of Rs. 12,000/- granted under 'No fault liability' will be deducted from the compensation arrived at by the Tribunal.

383. Babu Rao purchased one Ambassador car in the year 1992. He was running it without insurance. He had a son Keerti, aged about 17 years. He also learnt driving of the car but he did not obtain any driving licence. One day, that boy drove the car in a rash and negligent manner and caused a minor accident in which a pedestrian received minor injuries. At that time, the Police checked the registration certificate of the car and found that the car was not having any valid insurance. When the police have asked the boy to produce the driving licence he confessed that he did not obtain any driving licence. Whether the owner of the car is liable for any punishment for not insuring the car and whether his son is liable for any punishment for not having driving licence?

Under Section 3 of the Motor Vehicles Act, 1988, no person shall drive a motor vehicle in any public place without any valid driving licence and under Section 4, no person under the age of eighteen years shall drive a motor vehicle in any public place. Under Section 181, whoever, being the owner or person in charge of a motor vehicle, causes, or permits any other person who does not satisfy the provisions of Sections 3 and 4 to drive the vehicle shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend one thousand rupees or with both. Under the same Section 181, whoever drives a motor vehicle in contravention of Sections 3 and 4 shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees

or with both.

Under Section 146, no person shall use a motor vehicle in a public place unless there is a policy of insurance and under Section 196, whoever drives a motor vehicle or causes or allows a motor vehicle to be driven in contravention of the provisions of Section 146, shall be punishable with imprisonment which may extend to three months or with fine which may extend to one thousand rupees or with both.

So, as Babu Rao, being the owner of the car, permitted his son who is aged 17 years and who does not possess any driving licence, he is liable for punishment under Sec. 181 of the Motor Vehicles Act, 1988.

As Keerti, the son of Babu Rao, who is less than 18 years of age, has driven the motor vehicle in a public place and as he has also driven the motor vehicle without a driving licence, he is liable for punishment under Section 181 of the Motor Vehicles Act, 1988.

As Babu Rao, the owner of the car did not obtain any insurance policy and is running the car without an insurance policy and his son Keerti has driven the said car without an insurance policy, both are liable for punishment under Section 196 of the Motor Vehicles Act, 1988.

384. Lorry bearing No. AAT 2210 travelling from Suryapeta to Hyderabad was being driven by its driver rashly and negligently. While the lorry reached Narkatpalli, the driver could not control the speed and he could not negotiate a curve and he dashed the lorry against the compound wall of a house. The lorry is covered by a valid insurance policy. The owner of the house claimed compensation of Rs. 7,500/- for the destruction of the compound wall. The court granted the same. Whether the insurance company is liable to pay the entire compensation?

Under Section 147 (2) (b) of the Motor Vehicles Act, 1988, the liability of the insurance company in respect of damage to any property of a third party, is upto a limit of Rs. 6,000/-. So, the owner of the house can recover compensation of Rs. 6,000/- from the insurance company and the remaining Rs. 1500/- from the owner of the lorry.

385. Yadagiri is the owner of Tractor-Trailer. The tractor is

covered by a valid insurance policy but the trailer has no insurance policy. One day, while the Tractor-trailer was going on the road, one lady got into the trailer. Thereafter, the driver of the tractor-trailer drove the vehicle rashly and negligently talking to the lady. While the tractor-trailer reached a small culvert, the driver could not control the speed and the tractor-trailer turtled down and the lady sitting in the trailer died. The heirs of the lady filed a petition in the Motor Accidents Claims Tribunal claiming compensation. Whether the insurance company is liable for the compensation?

Though the accident occurred on account of the rash and negligent driving of the vehicle by its driver, as the trailer is not covered by a valid insurance policy and the lady travelling in the trailer died in the accident, the insurance company is not liable for any compensation and the owner alone is responsible for the compensation awarded by the Tribunal.

386. Hari Krishna is a glassware merchant. He purchased glass ware worth about 10,000/- and engaged a lorry to transport the same to Hyderabad and he also travelled in the lorry along with the goods. On the way, the lorry met with an accident on account of the rash and negligent driving by its driver and Hari Krishna died. The lorry is covered by a valid insurance policy. Since, Hari Krishna was travelling in the lorry as the owner of the goods, whether the insurance company is liable to pay compensation?

As Hari Krishna is travelling in the lorry as a owner of the goods and as the accident occurred on account of the rash and negligent driving of the lorry by its driver, the insurance company is liable to pay compensation to the claimants.

387. Ravikiran and Vishnuvardan are close friends. After completion their B.E. they joined as apprentices in a big Organisation. Ravikiran was married and Vishnuvardan was not married. One day while both the friends were coming on a scooter, one lorry came from behind and hit the scooter as a result of which both died on the spot. The wife of Ravikiran and parents of Vishnuvardan have filed separate claim petitions in the Motor Accidents Claims Tribunal claiming compensation at the rate of Rs.2 lakhs for each of the deceased. After enquiry, the Tribunal awarded Rs.50,000/- to the parents of Vishnuvardhan

and Rs. 1 lakh to the wife of Ravikiran. While awarding the above compensation, the Tribunal took into consideration the ages of claimants. The wife of Ravikiran is aged about 23 years and the parents of Vishnuvardan are aged 65 years and 53 years respectively. The parents of Vishnuvardan felt that as both the deceased are doing the same work, having studied the same course, B.E. and as both are of the same age, there is discrimination in awarding compensation. Whether there is any basis for the thinking of the parents of Vishnuvardan?

While granting compensation, loss of dependency will be taken into consideration. It is one of the factors for deciding the quantum of compensation. As the wife of Ravikiran is young in age and loss of dependency for her is more, the multiplier applied in her case will be more. But in the case of aged parents of a deceased unmarried man like Vishnuvardan as their loss of dependency is very less, the multiplier adopted in case of such old parents will be less. So the thinking of the parents of Vishnuvardan is illfounded and the lower tribunal is perfectly right in awarding the compensation.

388. Madhu and his wife, Deepa were travelling in an APSRTC Bus from Visakhapatnam to go to Hyderabad. On the way, on account of the rash and negligent driving of the bus by its driver, the bus got involved in an accident in which the couple received grievous injuries. The wife died first on account of the grievous injuries sustained by her in the accident. Within a fortnight thereafter, the husband also died. Whether the parents and other dependents of Madhu are entitled to compensation for death of both Madhu and Deepa?

As the wife, who received injuries in the road accident on account of rash and negligent driving of the bus, died first, immediately after her death her husband is entitled to compensation. Even without receiving the said compensation he too died and so after the death of Madhu, his dependants are entitled to both the compensations payable on account of the death of Deepa and on account of the death of Madhu.

389. Chandramouli worked as a driver of a lorry. While he was working as a driver, he earned a lot by allowing passengers by collecting fares from them. Within three years, he could earn about Rs. 50,000/-. He thought of purchasing a lorry. So he sold the gold ornaments of his wife for about Rs. 25,000/-. In all he

secured Rs. 75,000/- and then approached a finance company for the remaining amount. The finance company advanced the remaining amount and ultimately he purchased a lorry and is engaging it for hire. Till the last instalment is discharged, the finance company will have a lein on the lorry. At the time of purchase of the lorry, insurance policy was taken for the lorry. After one year, the policy expired. Chandramouli did not know about the renewal of insurance policy. Within one month of the expiry of the insurance policy, an accident took place on account of the rash and negligent driving of the lorry and two persons who were going on a scooter, died. The respective dependents of those two deceased persons filed separate claim petitions. Whether the insurance company is liable for the compensation that may be awarded by the Tribunal?

As the insurance policy expired just one month prior to the accident and as it was not renewed, the insurance company is not liable for any compensation that may be granted by the Tribunal for the death of the two deceased persons. Had the insurance policy been renewed within time, the insurance company would have been liable for the compensation. As Chandramouli did not renew the insurance policy in time, he is personally liable for the compensation that may be awarded by the Tribunal.

390. Shiva Prasad and his wife, Radhika were returning to their house situated at Ramanthapur, after watching a film in Taranaka on a scooter. At that time, it was about 10-00 P.M. and that day happened to be a Amavasya day. While they were about to reach Ramanthapur, a lorry came at a high speed driven by its driver in a rash and negligent manner in the opposite direction and hit the scooter and Shiva Prasad fell under the lorry and his wife, Radhika was thrown out side the road margin. Shiva Prasad died on the spot. The driver of the lorry did not stop the lorry and proceeded, though he was bound to inform about the accident in the nearest Police Station and admit the injured persons in the nearest hospital. Nobody was there at that time and Radhika could not see the number of the lorry and she could not identify the lorry or its driver. Radhika received superficial injuries but her husband died on the spot. As she did not know the lorry number or other details of the lorry involved in the accident, whether she is entitled to any compensation?

Under clause (b) of sub-section (1) of Section 161 of the Motor Vehicles Act, 1988, an accident arising out of the use of a motor vehicle the identity where of cannot be ascertained in spite of reasonable efforts is called 'hit and run motor accident'. Under sub-section (3) of Sec. 161, the dependants of the deceased shall be paid as compensation a fixed sum of Rs. 8,500/- in respect of the death of any person resulting from a hit and run motor accident and Rs. 2,000/- in respect of grievous hurt to any person resulting from a hit and run motor accident. So, as Radhika, the wife of the deceased cannot ascertain the identity of the lorry involved in the accident inspite of reasonable efforts, she is entitled to claim a sum of Rs. 8,500/- for the death of her husband in the accident. However, if on investigation the details of the lorry are known and basing on those particulars, if any petition for compensation is filed by the dependants of the deceased and if any compensation is awarded, the amount of compensation paid under Section 161 shall be refunded to the insurer.

391. Ramanna, who was aged about 17 years and unmarried, died in a road accident which occurred on account of the rash and negligent driving on the bus by its driver. His parents were illiterate and poor and though they were advised that they were entitled for compensation for the death of their son, they were postponing the matter on one pretext or the other. The main reason for dodging the filing of a petition was that they are not having sufficient amount and they thought that if they went to court they had to spend huge amount. In the meantime, the time limit of six months for filing a claim petition expired. They are also not having sufficient means to pay the court fees. What has to be done by the parents of the deceased boy?

Under sub-section (3) of Section 166 of the Motor Vehicles Act, 1988, no application for such compensation shall be entertained unless it is made within six months of the occurrence of the accident; provided that the Claims Tribunal may entertain the application after the expiry of the said period of six months but not later than twelve months, if it is satisfied that the applicant was prevented by sufficient cause from making the application intime. So, the parents of the deceased boy can file a petition for condonation of delay explaining the circumstances under which they were prevented

to file the said petition within six months. But even that petition should be filed within twelve months from the date of accident.

As regards the court fee payable by the parents of the deceased, as they are stated to be poor and not in a position to pay the court fee, they can file a petition requesting the court to exempt them from payment of Tribunal fee and the Tribunal may in its discretion exempt them from payment of court fee. However, if exemption is granted they have to pay the court fee due, before a copy of the judgment is obtained.

392. Narasimhulu and Ganesh were brothers. Ganesh was having a lorry. Narasimhulu was looking after the lorry. It was given an impression to one and all that he was the owner of the lorry. One day, the lorry was involved in an accident and one agriculturist died in the accident. His dependants filed a claim petition in the Motor Accidents Claims Tribunal claiming compensation. In that petition, they impleaded, besides the driver and insurance company, Narasimhulu as the owner of the lorry, who, in fact, is not the owner. Narasimhulu filed a counter stating that he was not the owner of the lorry and his brother Ganesh, was the owner. By that time the period of limitation expired. Whether the petitioners can implead the original owner by way of substitution after the period of limitation?

If there is a bonafide mistake on the part of the petitioners, the real owner can be added by filing an amendment petition and the Tribunal has got power to implead the real owner if it is satisfied that there is a bonafide mistake on their part.

25

THE NEGOTIABLE INSTRUMENTS ACT, 1881 (Act No.26 of 1881)

- 393. *Computation of period of limitation when the day of maturity is a holiday*
- 394. *Effect of material alteration of a negotiable instrument*
- 395. *Noting by a Notary*

396. Dishonour of cheque for insufficiency, etc., of funds in the account and consequences for issuing such cheque

393. Raghavayya borrowed a sum of Rs. 5,000/- from Bhushayya on 2-10-1990 and executed a promissory note on the same day. Though two years elapsed, Raghavayya did not repay the said amount or any part thereof. Bhushayya issued a registered notice to Raghavayya demanding payment of the principal and interest due on the promissory note dated 2-10-1990. Raghavayya approached Bhushayya and while stating that he was in financial troubles requested him to grant some more time. Bhushayya agreed and postponed his intention to file a suit. At the request of Raghayya, time was being extended from time to time. Ultimately, the last date for filing of the suit i.e., the three years limitation period was about to expire. Raghavayya approached Bhushayya on 30-9-1993 and requested Bhushayya not to file any suit and he would give the amount by the evening of the next day, with an evil intention that if the amount was not paid within three years, the pronote will become time barred and Bhushayya could not file a suit. Bhushayya innocently believed his request and waited till the evening of 1st October 1993 with the hope that Raghavayya would bring the money. But Raghavayya did not pay the money and on the other hand, he sent word to him asking him to do whatever he wanted to do saying that the pronote was time barred, as 2nd October 1993 happened to be a public holiday. Can Bhushayya file a suit on the promissory note dated 2-10-1990 on 3rd October 1993 as 2nd October 1993 happened to be a public holiday?

Under Section 25 of the Negotiable Instruments Act, 1881, when the day on which a promissory note is at maturity is a public holiday, the instrument shall be deemed to be due on the next following business day. So, Bhushayya can file a suit on the promissory note dated 2-10-1990 on 3-10-1993 as the last date of filing the suit, i.e., 2-10-1993, happened to be a public holiday.

394. Santharam borrowed Rs. 10,000/- from a money lender, Neelakanta Rao on 28-3-1990 and executed a promissory note. Neelakanta Rao has got several money transactions and several promissory notes and other dealings. Santharam did not pay anything under the promissory note executed by him. Neelakanta

Rao forgot about the promissory note executed by Santharam and in the meantime, the three years period of limitation expired. After the expiry of three years period, he happened to see the promissory note while searching for another document and realised that the promissory note was barred by time. Then he altered the last digit in the year viz., '0' and changed it as '1' as if the promissory note was executed on 28-3-1991 and based on that date, he filed the suit. The defendant, Santharam contended that the promissory note was actually executed on 28-3-1990 but not on 28-3-1991 and that there was a material alteration in the year which renders the promissory note void. What is the effect of the material alteration?

Under Section 87 of the Negotiable Instruments Act, 1881, any material alteration of a negotiable instrument renders the same void as against any one who is a party thereto at the time of making such alteration and does not consent thereto unless it was made in order to carry out the common intention of the original parties. Any such alteration, if made by an endorsee, discharges his endorser from all liability to him in respect of the consideration thereof.

As Neelakanta Rao has made the alteration, without the knowledge and consent of Santharam, in the date of the promissory note, such alteration renders the promissory note void and discharges the endorser, Santharam from all liability in respect of the consideration thereof.

395. Harischandra Prasad borrowed a sum of Rs. 2,000/- from Sreeramachandra Murty and executed a promissory note, on 2-11-1990. Though two and half years period elapsed, Harischandra Prasad did not repay anything due under the promissory note. When demanded by Sreeramachandra Murty, Harischandra Prasad, while admitting his liability, requested for some more time. Then Sreeramachandra Murty took Harischandra Prasad to a Notary and caused such dishonour to be noted by the notary. Subsequently, as Harishchandra Prasad did not pay the promissory note amount, Sreeramachandra Murty filed a suit. What is the effect of notary?

Under Section 99 of the Negotiable Instruments Act, 1881, when a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may cause such dishonour to be noted by a notary public upon

the instrument or upon a paper attached thereto or partly upon each. Such note must be made within a reasonable time after dishonour and must specify the date of dishonour, or if the instrument has not been expressly dishonoured, the reason why the holder treats it as dishonoured and the notary's charges.

Noting by a Notary is a method of obtaining unimpeachable evidence of the fact of dishonour of a negotiable instrument. It is a record made by an Officer known as the Notary Public on a dishonoured bill or upon a paper attached to it.

396. Ram Pratap has a Savings Bank Account, with cheque facility, in Andhra Bank, Sultan Bazar Branch. He has to pay an amount of Rs. 5,000/- to M.D. Electronics and when they insisted on payment of the amount due, Ram Pratap gave a cheque in favour of M/s. M.D. Electronics drawn on Andhra Bank. Ram Pratap has no amount to the credit of his S.B. Account in the Bank. So, the Bank returned the cheque with an endorsement that the amount is insufficient to honour the cheque. Whether Ram Pratap is liable for any offence and what steps have to be taken by M/s. M.D. Electronics against Ram Pratap?

Under Section 138 of the Negotiable Instruments Act, 1881, where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may extend to one year or with fine which may extend to twice the amount of the cheque or with both.

Before prosecuting the person who issued the cheque without sufficient amount, the following conditions have to be fulfilled by the payee. (a) The cheque has to be presented to the Bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier; (b) The payee or the holder in due course of the

chequè, as the case may be, makes a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer of the cheque, within fifteen days of the receipt of information by him from the bank regarding the return of the cheque as unpaid and (c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Under Section 142, (a) no court shall take cognizance of any offence punishable under Section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque; (b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to Section 138 and (c) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the First Class shall try any offence punishable under Section 138.

So, after following the above procedure, M/s. M.D. Electronics can file a complaint against Ram Pratap for an offence under Section 138 of the Negotiable Instruments Act.

26

THE PARSI MARRIAGE AND DIVORCE ACT,
1936

(Act No. III of 1936)

397. *Effect of marriage contracted during the life time of his first wife*
398. *Suit for dissolution of marriage when the husband shall have been continuously absent from his wife for the space of seven years and not have been heard of as being alive within that time*
399. *Decree of divorce on the ground of the marriage not being consummated within one year*
400. *Custody of children*

397. Jamshed married Rosi. They are Parsis. After two years, Jamshed started living with another lady and he ultimately married her during the life time of his first wife. What is the effect of the marriage?

Under sub-section (2) of Section 4 of the Parsi Marriage and Divorce Act, 1936, the marriage contracted during the life time of his first wife, contrary to the provisions of sub-section (1) of Section 4 is void and under Section 5 of the said Act, the husband is subject to the penalties provided in Sections 494 and 495 of the Indian Penal Code.

398. Minu married Leila according to the Parsi Marriage and Divorce Act 1936, as they belong to Parsi community. Minu went to America. While he was travelling in a plane, there was an accident and several passengers in the plane were believed to be dead. For more than seven years, Leila did not hear about her husband. Whether the wife is entitled to re-marry another man?

Under Section 31 of the Parsi Marriage and Divorce Act, 1936, if the husband shall have been continuously absent from his wife for the space of seven years and shall not have been heard of as being alive within that time by those persons who would have naturally heard of him, the wife can file a suit for dissolution of the marriage and after obtaining a decree for dissolution, she can re-marry.

399. Framrose and Ruby, who belong to Parsi community are a married couple. The marriage was performed against the will of Ruby and she did not like that marriage. She refused to join her husband and refused to have sexual intercourse with him. Like that more than one year passed. In spite of requests made by her husband and in spite of advice given by their relations she did not change her mind. What is the position of the husband?

Under Sub-section (a) of Section 32 of the Parsi Marriage and Divorce Act, 1936, if the marriage has not been consummated within one year after the solemnization owing to the wilful refusal of the wife to consummate it, the husband is entitled to file a suit for a decree of divorce and after obtaining the decree he can remarry.

400. The marriage between Nuslee with Romi took place under the Parsi Marriage and Divorce Act, 1936, as they belong

to Parsi community. They have a son, aged 14 years. After some time, the wife started living in adultery. Thereupon, the husband filed a suit and obtained a decree for divorce. The wife was found in possession of some property also. What is the position of the son?

- * The court can pass an order under Section 49 of the Parsi Marriage and Divorce Act, 1936, for the custody of the son in favour of his father and the court may also order such settlement of the property which the wife is found to be entitled, not exceeding one half thereof, for the benefit of the children.

27

THE PREVENTION OF CORRUPTION ACT, 1988

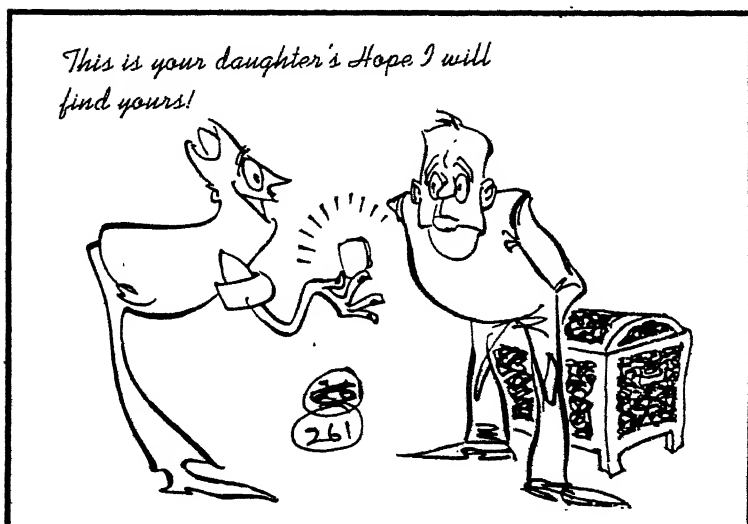
(Act No.49 of 1988)

401. *Possession of disproportionate assets*

402. *Obtaining valuable thing or pecuniary advantage by corrupt or illegal means*

401. Gajapathi joined service as an Assistant Collector of Customs. For some time, he worked honestly and won the appreciation of his superiors as a honest officer. He had two sons and three daughters and all of them were going to college. It became very difficult for him to maintain his big family with his monthly salary. Then he started taking bribes during the raids and got habituated to earning illegal money. Within a short span of period, he earned a lot of money and purchased a big bungalow and also house plots in the names of each of his children. He was earning money more than his needs. So, he used to purchase gold and convert the same into biscuits and kept them in the house. His eldest daughter, who was studying final year B.Com., fell in love with her classmate and one day eloped with him. While leaving the house, she took some gold biscuits along with her. When his eldest daughter was found missing, Gajapathi gave a police complaint. The police made a thorough search for the eldest daughter of Gajapathi in and around the city and also in the neighbouring cities. At last, the police could trace her in a hotel at Cuddapah with her lover. They also searched her suit

case and they found ten gold biscuits. On through interrogation, she confessed that she brought them from her house. She also confessed that there were many gold biscuits in her father's custody hidden in a wall. Thereupon, on the information furnished by the eldest daughter of Gajapathi, C.B.I. people seized up the matter, conducted raid in the house of Gajapathi and several gold biscuits, gold ornaments and cash were seized. On simultaneous raids conducted in the houses of his relatives, some valuable properties belonging to Gajapathi were traced. It was also revealed that he has purchased several houses and also house sites in the names of his children. On being questioned about the properties, Gajapathi could not satisfactorily account for the properties which were found to be disproportionate to his known sources of income. Whether Gajapathi is liable for any punishment for possessing disproportionate properties?



Under Section 13 (1) (e) of the Prevention of Corruption Act, 1988 (49 of 88), a public servant is said to commit the offence of criminal misconduct if he or any person on his behalf is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income and under Section 13 (2) of the said Act, any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year

but which may extend to seven years and shall also be liable to fine.

So, as Gajapathi was proved to have been in possession of properties disproportionate to his known sources of income, and he could not satisfactorily account for the same, he is liable for the above said punishment.

402. Tilak was working as Revenue Inspector in Mandal Revenue Office, Tekkali. He was a public servant within the meaning of Section 21, I.P.C. He became corrupt. Ramasundaram applied for grant of permission to start a rice mill and the Revenue Inspector had to recommend for the grant of permission. The Revenue Inspector demanded Rs. 1,000/- for making a recommendation. Ramasundaram returned saying that he would bring the amount. He went to the Deputy Superintendent of Police, ACB and lodged a complaint against the Revenue Inspector. Thereupon, a case was registered. On 4-10-1992 at 11-30 A.M. the Deputy Superintendent of Police, A.C.B. gave Rs. 1,000/- sprinkling phenolphthalein powder on it to the complainant, Ramasundaram to be given to Tilak, the Revenue Inspector. The Deputy Superintendent of Police also noted the numbers of the notes given to Ramasundaram. Ramsundaram went to the M.R.O. Office and met the Revenue Inspector and gave Rs. 1,000/- as demanded by him for recommending for the grant of licence. Within some seconds thereafter, the Deputy Superintendent of Police, A.C.B. along with mediators went into the M.R.O. Office and conducted phenolphthalein test. He got a glass of water, mixed sodium carbonate powder in it. The sodium carbonate solution so prepared, was found colourless. Then he asked the Revenue Inspector to wash his fingers in the said solution. When he did so, the said solution water turned into pink colour. Then he asked the Revenue Inspector to produce the amount and seized the same in the presence of mediators and compared the numbers of currency notes with the numbers already noted in the report and found them tallying. Can the Revenue Inspector, Tilak be convicted for any offence?

* Under Section 13 (1) (d) of the Prevention of Corruption Act, 1988, if a public servant by corrupt or illegal means obtains for himself or for any other person any valuable thing or pecuniary advantage, he shall be punishable under sub-section (2) of Section 13 with imprisonment for a term which

shall be not less than one year but which may extend to seven years and shall also be liable to fine.

So, as the Revenue Inspector Tilak, by corrupt or illegal means obtained for himself an amount of Rs. 1,000/- from Ramasundaram for doing favour a to him, he is liable for punishment under Section 13 (1) (d) r/w. Sec. 13 (2) of the Prevention of Corruption Act, 1988.

28

THE PREVENTION OF FOOD ADULTERATION
ACT, 1954

(Act No.37 of 1954)

403. *Warranty*

404. *Punishment for adulteration of any article of food*

405. *Application of Probation of Offenders Act, 1958 or Section 360 of the Code of Criminal Procedure, 1973*

403. All the food items were being sold at reasonable rates in a Kirana Shop. It was being managed by unemployed graduates. The Food Inspector one day came and demanded money. The boy in charge of the shop said that this was a shop which is being run by unemployed graduates taking loan from the Government and that their object was only to sell the commodities at a cheaper rates with less profit. As money was not paid to him, the Food Inspector after a week came and took out a sample of ground nut oil which was collected from a sealed oil tin. The sales boy represented that the oil tin was purchased from Agarwal Oil Company and it was a sealed tin. Without verifying the bills produced by the sales boy, the Food Inspector collected the sample of oil and sent it for examination to the Public Analyst. After examination of the sample oil, the Public Analyst opined that it was an adulterated oil. Thereupon, a case was filed against the sales man in that shop in the court of the Judl. Magistrate of the First Class. The Sales Boy produced the cash bill and invoice relating to the oil tin from which the sample was collected. Whether he is liable for any offence?

Under Section 14 of the Prevention of Food Adulteration Act,

1954, the manufacturer or distributor or dealer has to give a warranty in writing in the prescribed form about the nature and quality of food article when such food article is sold to the vendor. If the accused can prove that the sample was collected from the sealed tin which is covered by a warranty given by the distributor and if, on analysis, found to be adulterated, the manufacturer/distributor is liable for the offence under Section 7 r/w. 16 of the Prevention of Food Adulteration Act and the sales man of the Unemployed Graduates Kirana Shop is not liable. The manufacturer/distributor has to be added as an accused after giving notice to him and he must be tried for the said offence.

404. Ramalingeswara Rao was running a Kirana Shop. The Food Inspector of the area one day visited his shop and having suspected that there was adulterated ground nut oil and turmeric powder, which were intended for sale to public for human consumption, took samples of both the items for being sent for chemical analysis. After following the procedure, the Food Inspector sent them to the Public Analyst, who, after analysis, opined that both the items were adulterated. Thereupon, a complaint was filed against the accused, Ramalingeswara Rao. The accused contended that the oil was not meant for human consumption and it was meant for lighting the lamps and that he did not manufacture the said oil but he purchased it from the main distributor. He did not produce any warranty. He also contended that the turmeric powder was also not meant for human consumption. Whether the accused has committed any offence?

Under Section 16 (1) of the Prevention of Food Adulteration Act, 1954, if any person manufactures for sale or stores, sells or distributes any article of food which is adulterated within the meaning of sub-clause (m) of clause (ia) of Section 2, is liable for punishment with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than one thousand rupees. In the above case as the two items, viz., oil and turmeric powder, sold by the accused, are found to be adulterated and as the accused has failed to prove that they are not meant for human consumption, he is liable for conviction under the above section.

405. Mukunda Rao was the owner of Hotel Mamatha. He was aged about 30 years. He was found guilty of the offence under Section 16 (1) r/w. Sec. 7 of the Prevention of Food Adulteration Act, 1954, for selling adulterated ice-cream and for using colours which were not permitted, and he was convicted for the said offence. When questioned as to the sentence, the accused has submitted an application requesting the court to release him under Probation of Offenders Act or under Section 360 Cr.P.C. Can the Court release him under either of the above provisions?

Under Section 20-AA of the Prevention of Food Adulteration Act, 1954, nothing contained in the Probation of Offenders Act, 1958 or Section 360 of the Code of Criminal Procedure, 1973, shall apply to a person convicted of an offence under the Food Adulteration Act unless that person is under eighteen years of age. As the accused in the above case is aged 30 years, he is not entitled to claim the benefits of Probation of Offenders Act or Sec. 360 of the Code of Criminal Procedure.

29

THE PRISONERS (ATTENDANCE IN COURTS)
ACT, 1955

(Act No.32 of 1955)

406. *Issuance of a commission for the examination of a person confined in a prison*

406. Padmanabha Rao has agreed to sell his house site measuring 300 square yards to Narayana Rao for a sum of Rs. 60,000/- and Narayana Rao has paid Rs. 10,000/- as advance of sale consideration and it is agreed that the balance of sale consideration shall be paid within 3 months and a regular sale deed shall be registered. With these terms, Padmanabha Rao has also executed an agreement of sale, scribed by Malleswara Rao and attested by two other persons. Subsequently, Padmanabha Rao has resiled from the agreement and refused to receive the balance of sale consideration offered by Narayana Rao and also refused to register the sale deed. Thereupon, Narayana Rao has

filed a suit for specific performance. Trial has commenced and witnesses are being examined. In the meantime, Malleswara Rao, the scribe of the agreement to sell, gets involved in a criminal case and he is sentenced to suffer R.I. for 3 years and he is undergoing imprisonment in Central Jail at Chanchalguda. Narayana Rao felt that the evidence of the scribe, Malleswara Rao is highly essential to prove the agreement of sale executed by Padmanabha Rao. As Malleswara Rao is in Central Jail, undergoing sentence of imprisonment, how can Narayana Rao examine him?

- * Under Section 7 of the Prisoners (Attendance in courts) Act, 1955 (32 of 1955), where it appears to any Civil Court that the evidence of a person confined in a prison is material in any matter pending before it and where the prison in which that person is undergoing imprisonment is situated outside the State or is more than fifty miles distant from the place of the court, the court may, if it thinks fit, issue a commission under the provisions of the Code of Civil Procedure, 1908, for the examination of the person at the prison in which he is confined. So, under this section Narayana Rao can file a petition in the Civil Court and if the court, if it thinks fit, may issue a commission to examine the prisoner, Malleswara Rao.

30

THE PROBATION OF OFFENDERS ACT, 1958
(Act No.20 of 1958)

407. *Release of offender on probation of good conduct*

407. Iqbal, a boy aged about 12 years, left his village and went to Cuddapah and joined in a hotel as a supplier. One day a quarrel ensued between him and his co-supplier in which, he beat the co-supplier with a plate and the co-supplier received an injury on his head. On a complaint given by the owner of the hotel, the boy was arrested and after investigation, charge sheet was filed. The court after trial convicted the boy for an offence under Section 324, I.P.C. As regards the sentence, as the boy being young in age, the court thought of releasing him on probation of good

conduct. Can the Court release him?

- * When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on Probation of good conduct, then, under Section 4 (1) of the Probation of Offenders Act, the Court may, instead of sentencing him at once to any punishment direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years, as the Court may direct and in the mean time to keep the peace and be of good behaviour. Before making any order under sub-section (1), the court shall take into consideration the report of the probation officer and under sub-section (3), the court may, if it is of opinion that in the interests of the offender and of the public it is expedient so to do, in addition, pass a supervision order directing that the offender shall remain under the supervision of a probation officer during such period.

31

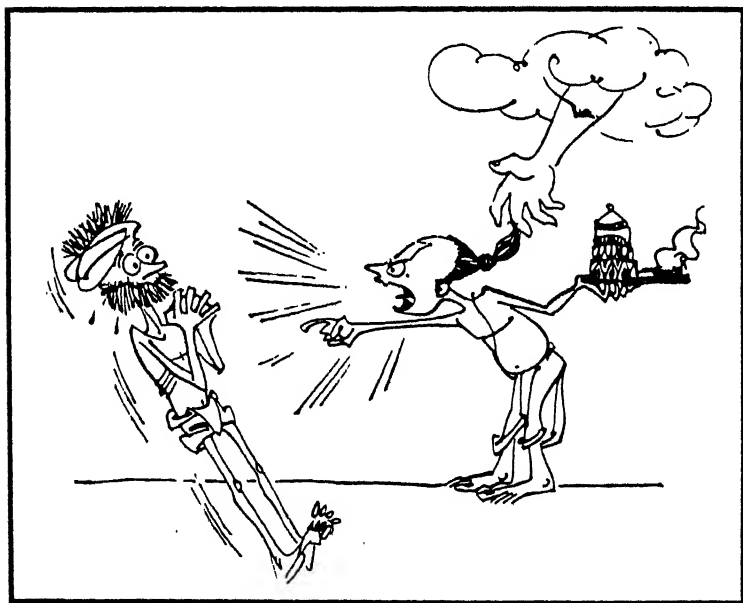
THE PROTECTION OF CIVIL RIGHTS ACT, 1955
(Act No.22 of 1955)

408. *Punishment for enforcing religious disabilities*

409. *Punishment for offence arising out of "Untouchability"*

408. Arundathi belongs to Harijan (MALA) community. She is working as a Nurse in the Government Hospital at Vikarabad. She lost her husband. She is transferred from Vikarabad to Naguru Primary Health Centre. Naguru is a village. Pursuant to the transfer orders, Arundathi joined at Naguru. Arundathi has a son, who is studying B.E. Two months after her joining at Naguru, a match was settled for her son with a Lecturer working in a Junior College. Arundathi performed the marriage of her son

in Naguru village. Three days after the marriage, she took her son and daughter-in-law to Lord Venkateswara temple, located in the same village. At the entrance of that temple, the priest of the temple, by name Venkata Sastry was chitchating with the Village Sarpanch, Bheemayya Naidu. In that village, Harijans are not allowed into the temples and this fact was not known to Arundathi and her son. When they were about to step into the temple, the priest stopped them saying that they belong to Harijan Community and Harijan people should not enter into the temple. Arundathi and her son, being educated persons, tried to convince the priest in a polite manner, but the priest did not allow them to enter into the temple. Both the priest and the Sarpanch prevented them from entering into the temple. What is the remedy available to Arundathi, her son and daughter-in-law?



- * Under Section 3 of the Protection of Civil Rights Act, 1955, whoever, on the ground of “untouchability” prevents any person (a) from entering any place of public worship which is open to other persons professing the same religion or any section thereof as such person or (b) from worshipping or offering prayers or performing any religious service in any place of public worship or bathing in, or using the waters of, any sacred tank, well, spring or watercourse, river or lake, in

the same manner and to the same extent as is permissible to other persons professing the same religion or any section thereof as such person; shall be punishable with imprisonment of not less than one month and not more than six months and also with fine which shall be not less than one hundred rupees and not more than five hundred rupees.

So Arundhati, her son and daughter-in-law can file a complaint under the above said Section, viz., Section 3 of the Protection of Civil Rights Act, 1955, against the priest and the Sarpanch, who are responsible for preventing them from entering into the temple, in the court of the Judicial Magistrate of the First Class.

409. John Paul is working as a Senior Assistant in M.R.O Office, Dharmavaram. He was transferred from Dharmavaram to M.R.O. Office, Guntakal. He is a Harijan. He has a son and a daughter, who are studying Intermediate. After his transfer, he admitted them in a Junior College at Guntakal. He decided to take a house on rent close to the Junior College so that it will be convenient for his children to go to the college. He found several houses in a colony close to Junior College, with "TO LET" boards. He approached the owners of those houses and requested them to give their house on rent. Every owner asking his caste, refused to let out his house. Ultimately, he could not get any house on the ground of his community. What is his remedy?

Under Explanation I (a) to Section 7 of the Protection of Civil Rights Act, 1955, whoever refuses to let to such other person or refuses to permit such other person to use or occupy any house or land or refuses to deal with, work for, hire for, or do business with, such other person, or to render to him or receive from him any customary service or refuses to do any of the said things on the terms on which such things would be commonly done in the ordinary course of business, shall be punishable with imprisonment for a term of not less than one month and not more than six months and also with fine which shall be not less than one hundred rupees and not more than five hundred rupees. So, under the above section, John Paul can file a complaint against the persons refusing to let out their houses in a Court of the Judicial Magistrate of the First Class.

THE REGISTRATION OF BIRTHS AND DEATHS ACT, 1969

(Act No.18 of 1969)

- 410. *Special provision regarding births and deaths in a plantation*
- 411. *Delayed registration of births and deaths*
- 412. *Registration of name of child*
- 413. *Special provision as to registration of births of citizens outside India*
- 414. *Penalty for failure to give information or giving false information or refuses to write name and address*
- 415. *Birth in a moving vehicle*

410. There is a big tea plantation on more than five hectares of land in which tea, coffee and rubber are being produced. There are several workers, both men and women working in the said plantation. Among the lady workers, there is a lady Seetha, who is pregnant. While she is running in days of her delivery also, she comes for plucking the tea leaves. While engaged in work, she gives birth to a female child but unfortunately both the mother and child die in the said plantation. Who has report to the Registrar, the information of the deaths of Seetha and her child?

Under Section 9 of the Registration of Births and Deaths Act, 1969, in the case of births and deaths in a plantation, the Superintendent of the plantation shall give or cause to be given to the Registrar, the information referred to in Section 8. Provided that the persons, referred to in clauses (a) to (f) of sub-section (1) of Section 8, viz., the head of the house or the nearest relative of the head present in the house or the oldest adult male person present during the said period; (b) in respect of births and deaths in a hospital, etc., the Medical Officer, (c) in respect of births and deaths in a jail, the Jailor in charge, (d) in respect of births and deaths in a choultry etc., the person incharge thereof; and (e) in respect of any new-

born child or dead body found deserted in a public place, the Headman or other corresponding officer of the village in the case of the village and the officer in charge of the local police station elsewhere.

So, as Seetha gave birth to a child in the plantation and both mother and child died in the said plantation, under Section 9, the Superintendent of the plantation shall give or cause to be given the said information to the Registrar.

411. Raghavendra Rao married Syamala as per their caste custom and Hindu rites. After two years a son, Mahesh was born to them. When the boy attained the age of 4 years, they wanted to admit him in a good convent school, Rosewood Convent. The father, Raghavendra Rao filled up the necessary application and submitted the same to the convent. The convent authorities insisted on producing the birth certificate of the boy. The parents did not inform about the birth of the boy to the authorities as he was born in a village where most of the persons were illiterates. What has to be done by Raghavendra Rao to obtain a birth certificate of his son, Mahesh?

Under Section 13 of the Registration of Births & Deaths Act, 1969, read with Rule 11 of the Andhra Pradesh Registration of Births & Deaths Rules, 1977, under sub-rule (1) of Rule 11, any birth, still-birth or death of which information is given to the Registrar after the expiry of the period specified in Rule 6 but within thirty days of its occurrence, shall be registered on payment of a late fee of rupee one; under sub-rule (2) any birth, still-birth or death of which information is given to the Registrar after thirty days, but within one year of its occurrence shall be registered only with the written permission of the officer prescribed in this behalf on payment of a late fee of rupee three; under sub-rule (3) any birth or death which has not been registered within one year of its occurrence shall be registered only on an order of a Magistrate of the First Class (Executive Magistrate or a Presidency Magistrate) on payment of a late fee of rupee five.

So, as either Raghavendra Rao, the father of the boy or Syamla, the mother of the boy or anyone on their behalf has not reported about the birth of the boy to the Registrar, and as the boy has attained the age of more than one year, under

Section 13 (3) read with Rule 11 (3), they have to obtain an order from the Magistrate of the First Class and they have to submit that order along with a late fee of Rs. 5/- to the Registrar of Births and Deaths. Thereupon, the Registrar will register the birth of the boy and issue a birth certificate.

412. Maheswara Rao married Rohini. After two years, they had a daughter. Immediately after the birth of the child, they reported about the birth to the Registrar of Births and Deaths and got the birth registered. But at that time, they had not named the daughter. After 21 days Barasale function was celebrated and on that day, they named their daughter Sreelatha, but they did not report the name of the child to the registration authorities within one year. After one year, they proposed to go to U.S.A. and for that purpose they had to apply for a Passport and Visa. In that connection, the birth certificate containing the name of the daughter is said to be essential, but they did not report to the registration authorities the name of the child. What can they do?

Under Section 14 of the Registration of Births & Deaths Act, 1969, read with Rule 14 of the A.P. Registration of Births & Deaths Rules, 1977, where the birth of any child had been registered without a name, the parent or guardian of such child shall within 12 months from the date of registration of the birth of the child, give information regarding the name of the child to the Registrar either orally or in writing. Provided that if any such information is given after the period of twelve months, the Registrar shall enter the name in the register on payment of a late fee of Rupees two. The parent or the guardian, as the case may be, shall also present to the Registrar, a copy of the extract given to him under Section 12 or under Section 17 and on such presentation, the Registrar shall make the necessary endorsement relating to the name of the child.

So, Maheswara Rao shall have to present to the Registrar a copy of the extract given to him while registering the information relating to the birth of a child to them along with a late fee of Rs. 2/- to the Registrar of Births & Deaths upon which the Registrar shall make the necessary endorsement relating to the name of the child.

413. Arun Pratap and his wife Santhi Priya go to America to see their close relations who are staying there and also to see

important place in America. They stay there for about one year. During their stay in America, Santhi Priya becomes pregnant and ultimately gives birth to a female child there. They report about the birth of the child at the Indian Consulate. After the birth of the child, they along with the child, return to India with a view to settle in India. But the information as to the birth of the child in America is not received by the Registrar-General. What steps have to be taken by the parents of the child for the registration of the birth of the child?

Under sub-section (2) of Section 20 of the Registration of Births & Deaths Act, 1969, in the case of any child born outside India in respect of whom information has not been received as provided in sub-section (1) if the parents of the child return to India with a view to settling therein, they may, at any time within sixty days from the date of the arrival of the child in India, get the birth of child registered under this Act in the same manner as if the child was born in India and the provisions of Section 13 shall apply to the birth of such child after the expiry of the period of sixty days aforesaid.

So, under sub-section (2) of Section 20 of the Registration of Births & Deaths Act, 1969, the parents of the child, viz., Arun Pratap or his wife, Santhi Priya may, at any time, within sixty days from the date of the arrival of the child in India get the birth of the child registered in the office of the Registrar of Births and Deaths in the same manner as if the child was born in India.

414. Madhavayya has a daughter Soujanya. Immediately after the birth of the child, he was advised to report about the birth of the child to the Registrar of Births and Deaths. He refuses to write his name and address and also put his signature, thumb mark in the register, when he is taken to the office of the Registrar of Births and Deaths. Is he liable for any punishment?

Under sub-section (1) of Section 23 of the Registration of Births & Deaths Act, 1969, any person who (a) fails without reasonable cause to give any information which it is his duty to give under any of the provisions of Sections 8 and 9; or (b) gives or causes to be given, for the purpose of being inserted in any register of births and deaths, any information which he knows or believes to be false regarding any of the particulars required to be known and registered; or (c) refuse to write his

name, description and place of abode or to put his thumb mark in the register as required by Section 11, shall be punishable with fine which may extend to Rs. 50/-.

As, Madhavayya refused to write his name, description and also refused to put his thumb mark/signature in the register and as he has failed to give the information about the birth of a child to him, he is liable under Section 23 (1) for punishment with fine which may extend to Rs. 50/-.

415. Prashanth and Radhakumari, both husband and wife, went on a vacation to Andaman and surrounding places. They were going in a ship. By that time Radhakumari was pregnant and had completed 9 months of pregnancy. While they were sailing in the ship, Radhakumari gave birth to a male child. Who has to report about the birth of the child as she gave birth in a moving vehicle?

- * Under Rule 7 of the A.P.Registration of Births & Deaths Rules, 1977, read with Section 8 (1) of the Registration of the Births & Deaths Act, 1969, in respect of a birth or death in a moving vehicle, the person in charge of the vehicle shall give or cause to be given information under sub-section (1) of Section 8 at the first place of halt. As Radhakumari gave birth to a male child in a moving ship, the person in charge of the ship shall give or cause to be given the information regarding the birth of a male child to Radhakumari at the first place of halt.

33

THE SALE OF GOODS ACT, 1930

(Act No.3 of 1930)

- 416. *Pledge of a Motor Vehicle purchased under hire-purchase scheme*
- 417. *Goods perishing before making of contract without the knowledge of the seller*
- 418. *Stipulations as to time of payment*

416. Govardhan purchased LML Vespa Scooter on hire purchase scheme from S.V.Motors Limited. On payment of the initial amount the scooter was delivered to Govardhan. He was paying instalments regularly. He had to still pay ten instalments at the rate of Rs. 1,000/- per month. At that stage, he pledged the scooter in a Private Bank for obtaining a loan. Under hire purchase scheme, he will become the owner after the payment of the last instalment. Whether Govardhan can validly pledge the scooter for obtaining the loan?

Under Section 4 of the Sale of Goods Act, 1930, contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. In a hire-purchase agreement, the owner retains his ownership and gives the hirer only a right to use the scooter in consideration of the periodical payments to be made by the hirer. Until the payment of last instalment, there is no transfer of property from the owner to the hirer. So, Govardhan cannot pledge the vehicle to obtain a loan till he repays the last instalment.

417. There is a big fish and prawn supply company. Ramesh Goud has entered into an agreement with that company for supply of 100 Kgs. of fish of special category. By that time, the fish are in the canal. Due to heavy rain, breaches occurred to the

*This is my choice.
the Sellar comes nowhere
between you and me.*



fish pond and the sea water entered into the ponds and the fish died. Ramesh Goud insists for supply of fish as per the contract. Is the fish company liable for any damages to Ramesh Goud?

Under Section 7 of the Sale of Goods Act, 1930, where there is a contract for the sale of specific goods, the contract is void if the goods, without the knowledge of the seller, have, at the time when the contract was made, perished or become so damaged as no longer to answer to their description in the contract.

As the sea water entered into the fish ponds and the fish died without the knowledge of the seller, for which there was a contract between the fish company and Ramesh Goud, the contract will become void and under Section 7, such contract is void and under Section 8, the contract can be avoided.

418. Venkataramana, Siddayya, James and Ismail have entered into a partnership firm to deal in whole sale business in paper and stationery items. In the partnership agreement three partners want to incorporate a clause that a partner should not, while he remains a partner, carry on any business other than that of the firm. The fourth partner has objected to that clause. What is the effect of that clause?

Under sub-section (2) of Section 11 of the Sale of Goods Act, 1930, notwithstanding anything contained in Section 27 of the Indian Contract Act, 1872, such contracts may provide that a partner shall not carry on any business other than that of the firm, while he is a partner. The general rule is that a contract in restraint of trade is void. When the goodwill of a firm is sold, the buyer may enter into an agreement with any partner by which the partner is restrained from carrying on any business similar to that of the firm whose goodwill is sold. If the restriction thus imposed is reasonable, it can be enforced.

THE SCHEDULED CASTES (PREVENTION OF 'ATROCITIES) ACT, 1989

(Act No.33 of 1989)

- 419. *Punishment for forcibly removing clothes from the person of a member of a Scheduled Caste or a Scheduled Tribe or parading him naked*
- 420. *Punishment for forcing or intimidating a member of Scheduled Caste or a Scheduled Tribe not to vote or to vote to a particular candidates*
- 421. *Punishment for exploiting a woman belonging to a Scheduled Caste or a Scheduled Tribe by dominating her will*
- 422. *Removal of person likely to commit offence*
- 423. *Non-application of Section 360 of the Code of Criminal Procedure or the provisions of the Probation of Offenders Act to persons above the age of eighteen years*

419. Rama Seetha is the daughter of Subbaraya Sarma, who is working as Village Officer of Perumalu village. They belong to forward caste, viz., Brahmin caste. Ramaseetha is studying Intermediate in a junior college. In the same college a boy by name, Krishna Kumar, who belongs to Scheduled Caste (MALA) is also studying Intermediate. Both Ramaseetha and Krishna Kumar used to meet often and their meeting ultimately turned into love between them. They used to exchange love letters. After some time, this love affair came to light and ultimately reached the ears of Subbaraya Sarma. He became furious and complained to their caste elders, who called the boy Krishna Kumar and also his father and questioned them. The boy admitted the love affair and expressed to marry Ramaseetha whereupon all the elders became angry and scolded the boy and his father. They called one barber and directed him to shave the head of the boy. They removed his clothes by force, brought one ass and on that ass the boy was forcibly made to sit and was taken through the streets. What is the remedy for the boy?

Under Section 3 (1) (iii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, whoever, not

being a member of a Scheduled Caste or a Scheduled Tribe, forcibly removes clothes from the person of a member of a Scheduled Caste or a Scheduled Tribe or parades him naked or with painted face or body or commits any similar act which is derogatory to human dignity, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.

So, under the above section, Krishna Kumar can file a complaint against the persons responsible for committing the above acts, in a Court of Session.

420. Panchayat elections were scheduled for Aluru village. Ramayya Goud is the sitting Sarpanch and he wanted to contest again for the post of Sarpanch. As the decisions taken by Ramayya Goud during his term of sarpanchship were mostly against the welfare of Harijans, they decided to vote against him in the ensuing elections. On the date of elections, coming to know of their decision, Ramayya Goud arranged some Goondas and Rowdies and instructed them to see to that the Harijans do not come to the election booth to vote. The people of Ramayya Goud hatched up a plan and invited all the Harijan voters to a choultry and while all of them were inside the choultry, they bolted the doors and thus prevented them from exercising their right of franchise. Ultimately, elections were completed wherein the Harijan voters could not exercise their franchise and consequently, the sitting Sarpanch, Ramayya Goud was elected as a Sarpanch with a small margin of votes. Can the Harijan voters take any action against the sitting Sarpanch, Ramayya Goud? If so, what is it?

Under Section 3 (1) (vii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, forces or intimidates a member of a Scheduled Caste or a Scheduled Tribe not to vote or to vote to a particular candidate or to vote in manner other than that provided by law, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine. So, the Harijan voters, who are prevented from exercising their franchise in the Gram Panchayat Elections, can file a complaint against the persons concerned in a Court of Session, which is a special Court to try the offence under the said Act.

421. Rajeswari is a Graduate in Commerce and she belongs to Scheduled Caste (Harijan). She was appointed as a clerk in a reserved vacancy in the office of the Commissioner of Excise. She has been discharging her duties honestly to the satisfaction of her superiors. In discharge of her duties, she used to approach the Officer for signatures on the office files. The Officer has an eye on the lady. One day as usual, when Rajeswari went into his chamber, the officer told her that he will give promotion, irrespective of her seniority provided she submits herself to him for sexual intercourse. Is there any remedy for Rajeswari to take against the officer and if so what is it?

Under Section 3 (1) (xii) of the S.C. and S.T. (Prevention of Atrocities) Act, 1989, whoever not being a member of a Scheduled Caste or a Scheduled Tribe, being in a position to dominate the will of a woman belonging to a Scheduled Caste or a Scheduled Tribe and uses that position to exploit her sexually to which she would not have otherwise agreed, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine. So, she can file a complaint in the Special Court against the officer under the above said section of law.

422. Ramdas, a non-tribal entered into Bhadrachalam, which is a notified tribal area, as referred to in Article 244 of the Constitution, indulged in acts, viz., encouraging the non-tribals to occupy the land owned by or allotted to or notified by any competent authority to be allotted to, a member of a scheduled caste or a scheduled tribe or gets the land allotted to him transferred; he wrongfully dispossesses the members of scheduled tribes from their land and interfering with the enjoyment of their rights over the lands; he compels or entices a member of a Scheduled Tribe to do 'beggar' or other similar forms of forced or bonded labour; creating documents evidencing sale of land to get over the provisions of law and doing all sorts of acts and indulging in several offences. Is there any remedy for the Tribals against that person?

Yes. There is a remedy as provided under Section 10 of the S.C. and S.T. (Prevention of Atrocities) Act, 1989, under which the Tribals can file a complaint before the Special Court against that person. Where the Special Court is satisfied, upon the complaint so filed that Ramadas is likely to commit

offences under Chapter II of the Act in the scheduled areas or tribal areas, the said court can direct such person to remove himself beyond the limits of such area, by such route and within such time as may be specified in the order and not to return to that area from which he was directed to remove himself for such period, not exceeding two years.

423. Ramsastry, Raminaidu and three of their followers were tried for the offence under Section 3 (1) (iii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, for forcibly removing clothes from Krishna Kumar, a member of the Scheduled Caste and parading him naked in derogatory to human dignity. Ultimately, they were found guilty of the said offence. As regards the sentence to be imposed, they pleaded the benefit of Section 360 of the Code of Criminal Procedure or the provisions of the Probation of Offenders Act. Can the Magistrate, who found them guilty of the offence under Section 3 (1) (iii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, release the accused either under Section 360 of the Code of Criminal Procedure or under the provisions of the Probation of Offenders Act?

* Under Section 19 of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989, the provisions of Section 360, Cr.P.C. and the provisions of the probation of offenders Act, 1958, shall not apply to any person above the age of eighteen years who is found guilty of having committed an offence under the said Act. So, as the accused in the above case, who are above the age of eighteen years, are found guilty of having committed the offence under Section 3 (1) (iii) of the S.C. and S.T. (Prevention of Attrocities) Act, 1989, they are not entitled to the benefits of Section 360, Cr.P.C. or the provisions of the Probation of Offenders Act.

THE SPECIAL MARRIAGE ACT, 1954

(Act No.43 of 1954)

424. *Petition for divorce on the ground of the husband undergoing a sentence of imprisonment for seven years or more for an offence as defined in the Indian Penal Code, 1860*

425. *Appeal against the order of Marriage Officer refusing to register the marriage*

426. *Legitimacy of children*

424. Gireesh and Mukesh are two brothers. Gireesh married Lalitha Rani under Special Marriage Act while Mukesh married Rohini under Hindu Marriage Act. Both the brothers joined in the group of dacoits. While they were committing dacoity, they were caught red handed and they were tried and ultimately they were convicted for the offence of dacoity and sentenced to undergo imprisonment for ten years each. Their wives, Lalitha Rani and Rohini felt ashamed of the acts committed by their respective husbands and wanted to get rid of their respective husbands on the ground of their conviction and sentence. Can they obtain divorce from the Court?

* Lalitha Rani who married Gireesh under Special Marriage Act, can obtain divorce from the court as her husband was sentenced to imprisonment for more than 7 years. But, Rohini who married Mukhesh under Hindu Marriage Act, cannot get divorce on the ground of her husband being convicted and sentenced to imprisonment for more than 7 years as this is not one of the grounds under Hindu Marriage Act to obtain divorce.

425. Bharani Kumar and Srivani, both belonging to different castes, loved each other and they proposed to marry. Both were majors. But their respective parents did not approve this marriage. Then they went to the office of the Marriage Registrar and gave notice of the intended marriage as required under Section 5 of the special Marriage Act, in writing in the form specified under the Act to the Marriage Officer within whose jurisdiction, Bharani

Kumar was living for a period of more than thirty days immediately preceding the date of the said notice. In fact, Bharani Kumar was a permanent resident of Guntur where the Marriage Office is situated. The Marriage Officer entered the notice in the Marriage Notice Book and published the said notice by affixing a copy thereof to some conspicuous place in his office. As Srivani was residing in the neighbouring town Bapatla, the Marriage Officer also sent one copy of the said notice to that place calling for objections. Thereupon, the father of the girl filed an objection. The Marriage Officer on receipt of objections conducted an enquiry and ultimately found that the marriage was not in the interests of the couple and ultimately refused to register the marriage. What has to be done by the boy and girl?

Under Section 17 of the Special Marriage Act, there is an appeal provision. Any person aggrieved by the order of the Marriage Officer refusing to register the marriage, within thirty days from the date of the order, can prefer an appeal to the District Court and the result of the appeal shall be final.

426. Gireesh and Savitri are aged 24 years and 20 years respectively and they are in love with each other. They have radical and progressive views. They feel that the performance of marriage in a marriage pandal undergoing several formalities like Homan, Saptapadi, etc., is only farce and so they decided to marry before the Marriage Officer. Accordingly, they give a notice of the intended marriage under Section 5 of the Special Marriage Act, in the prescribed form and after entering the said notice in the Marriage Notice Book and after publishing the same, the marriage is performed. Thereafter, they live as husband and wife and in course of time, they begot two children. What is the position of such children? Are they legitimate or illegitimate?

Under Section 26 of the Special Marriage Act, not with standing that a marriage is null and void under Section 24, any child of such marriage who would have been legitimate if the marriage had been valid, shall be legitimate. So, the children born to Gireesh and Savitri are legitimate children.

THE SPECIFIC RELIEF ACT, 1963

(Act No.47 of 1963)

427. *Remedy of a person dispossessed of immovable property*
 428 & 429. *Persons entitled to obtain specific performance where the contract is settlement on marriage or a compromise*
 430. *Persons disentitled to claim specific relief*
 431. *Specific performance of a contract be enforced against ny other person claiming under him*
 432. *Suit for permanent injunction and mandatory injunction*
 433. *Injunction to perform negative agreements*

427. Yadagiri is in possession of Ac. 3-00 of wet land since a long time. That land does not belong to the Government. Parasuram claiming title to the said land forcibly encroaches upon the said land and dispossesses Yadagiri from the said land. Can Yadagiri file a suit for recovery of possession?

In a possessory action a person dispossessed of immovable property can recover possession even if the person dispossessing is the real owner himself. The following conditions, which are mentioned in Section 6 of the Specific Relief Act should be fulfilled before the plaintiff can succeed in a possessory action, viz., (a) the plaintiff should have been in possession, (b) the possession should be of immovable property, (c) the plaintiff should have been dispossessed otherwise than in due course of law, (d) the suit should be for recovery of possession, (e) the suit should be brought within six months from the date of dispossession and (f) such a suit cannot be brought against the Government.

428. Venugopal has a son, Ravinder. Narasaraju has a daughter, Girija. Narasaraju requested Venugopal to give his son Ravinder in marriage to his daughter, Girija and he offers to give two acres of land possessed by him in favour of Ravinder, in addition to the dowry and other formalities. Venugopal agrees

and the marriage is performed. Even though two years have elapsed, Narasaraju does not register the two acres of land in favour of his son-in-law, Ravinder as per the agreement between Venugopal, his father and Narasaraju, his father-in-law. In the meantime, Venugopal died. Whether Ravinder who is not a party to the agreement, can insist his father-in-law, Narasaraju to transfer the two acres of land in his favour?

Under clause (c) of Section 15 of the Specific Relief Act, 1963, where the contract is a settlement on marriage or a compromise of doubtful rights between members of the same family, any person beneficially entitled thereunder, can obtain specific performance of the contract.

In the above case, as Venugopal, the father of the bridegroom, Ravinder and Narasaraju, the father of the bride Girija, entered into a settlement to settle two acres of land on the bride-groom, Ravinder and as Narasaraju has failed to settle the said land on the bridegroom as per the agreement, even though the bridegroom is not a party to the said contract, still he, the bridegroom, Ravinder can enforce the contract and obtain the benefit intended for him.

429. Jagapathi and Pasupathi are brothers. They have some ancestral properties. Pasupathi requested his brother, Jagapathi to partition the properties between themselves. Jagapathi did not agree for the partition stating that as he is the eldest member in the family their father settled the property in his favour. Ultimately the matter reaches the Court by filing a suit for partition. During the pendency of the suit, both the brothers enter into a compromise and as per the compromise, Jagapathi agrees to receive $\frac{3}{5}$ th share and Pasupathi agrees to receive $\frac{2}{5}$ th share. Even before the compromise is given effect to, Pasupathi dies. He has a son, Satyanand. Satyanand requests his paternal uncle to give the $\frac{2}{5}$ th share as per the compromise. Jagapathi declines to give as his father who is a party to the compromise is no more. Whether Satyanand, the son of Pasupathi, who is not a party to the compromise can claim the property as per the compromise entered into by his father, Pasupathi and his paternal uncle, Jagapathi?

Under Clause (c) of Section 15 of the Specific Relief Act, 1963, where the contract is a settlement on marriage, or a compromise on doubtful rights between the members of the

same family, any person beneficially entitled thereunder can obtain specific performance of the contract. As Jagapathi and Pasupathi have entered into a compromise and even before the compromise was given effect to, Pasupathi died, and as Satyanand, the son of Pasupathi is the beneficiary under the compromise, Satyanand can enforce the compromise as a beneficiary under it even though he is not a party to the compromise.

430. Chandrinaidu was tenant in respect of 5 acres of wet land belonging to Sambayya. Chandrinaidu failed to pay the rents. So Sambayya initiated proceedings for eviction of the tenant. Ultimately, eviction was ordered. In spite of the decree, Chandrinaidu did not vacate the land. Thereupon, Sambayya filed execution petition. During execution proceedings, Chandrinaidu set up an agreement of sale stating that Sambayya, the owner had agreed to sell the said land to him for Rs. 25,000/- and that he had also received an advance of Rs.5,000/- agreeing to register the sale deed within three months or as and when the balance of sale consideration was paid, whichever earlier. He also filed a suit for specific performance against Sambayya. But there was no allegation in the plaint about his readiness and willingness to perform the contract. What is the effect of the suit?

Among other conditions, under Section 16 of the Specific Relief Act, 1963, specific performance of a contract cannot be enforced in favour of a person who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him other than the terms of the performance of which has been prevented or waived by the defendant. Under explanation (i) to Section 16 it is stated that where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court; the plaintiff must aver performance of or readiness and willingness to perform the contract according to its true construction.

As there is no averment in the plaint that he is ready and willing to perform the contract and is ready to deposit the balance of sale consideration and as the agreement is also

proved to have been brought into existence to get over the eviction proceeding taken against him, Chandrinaidu, the tenant will not be entitled for any relief.

431. Adinarayana had a house site, measuring 300 square yards in Amberpet of Hyderabad. He entered into an agreement with Kondareddy on 20th October 1992 for the sale of the said plot for Rs. 75,000/- and executed an agreement of sale and received an advance of Rs. 5,000/- at the time of execution of the sale agreement and it was agreed between the parties that Kondareddy should pay the balance of sale consideration within three months and immediately on payment of the balance of sale consideration, Adinarayana should register the sale deed in favour of Konda Reddy. Within one month of the execution of the sale agreement, foundations were dug in the neighbouring plots for construction of a market yard and consequently the prices of plots in and around that market yard had considerably gone up. Adinarayana had developed an evil idea of getting more consideration. Without revealing the sale agreement executed by him in favour of Kondareddy, he executed a sale deed in favour of Sivarama Murty for the very same land for a consideration of Rs. 1.25,000/-, and put the vendee, Sivarama Murty in possession of the plot. Sivarama Murty had no notice of the earlier agreement entered into between the vendor, Adinarayana and Konda Reddy and he paid the entire sale consideration at the time of registration. Thereupon, Konda Reddy came to know of this sale transaction and filed a suit for specific performance of the agreement to sell. What would be the effect of the suit?

Under Clause (b) of Section 19 of the Specific Relief Act, 1963, specific performance of a contract may be enforced against any other person claiming under him by a title, arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract.

A suit brought against a subsequent purchaser would succeed unless the subsequent purchaser is able to show (a) that he is a transferee for value, (b) that he paid his money in good faith and (c) that he had no notice of the original contract.

As Sivarama Murty had no notice of the earlier agreement entered into by his vendor with Konda Reddy and without

notice of the same as he has paid the entire sale consideration in good faith, Konda Reddy cannot succeed in the suit and the suit filed by him is liable to be dismissed.

432. There is a joint lane in between the houses of Nagender and Seethapathi. It is a common path way and it is being used a common path way since a long time. While so, Nagender demolishes his house and starts reconstructing his house and while reconstructing his house he starts encroaching upon the common joint lane, thereby denying right of way to the inmates of Seethapathi. What is the right available to Seethapathi to prevent Nagender from encroachment?

- * Under Section 39 of the Specific Relief Act, 1963, when, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the act is capable of enforcing, the court may in its discretion grant an injunction to prevent the breach complained of and also to compel performance of the requisite acts. For obtaining a decree of mandatory injunction, the following conditions are to be fulfilled, viz., (1) it should be necessary to prevent the breach of an obligation, (2) for preventing the breach of the obligation it should be necessary to compel the performance of certain acts and (3) the court should be capable of enforcing those acts.

As Narender has encroached upon the joint lane, he can file a suit against Seethapathi for grant of permanent injunction restraining Nagender from making construction on the joint lane over which Seethapathi has claimed a right of way and he can also ask the court to direct the defendant, Nagender to demolish the construction already made on the joint lane, by way of mandatory injunction.

433. Anand Kumar is a good singer. Anand Kumar is engaged by Hotel Shiva' to sing songs every evening. There is a contract between the singer, Anand Kumar and the Hotel management that Anand Kumar should sing during music concerts every day in the evening in the auditorium of the club for a period of one year and it is agreed to pay a sum of Rs. 3,000/- per month to Ananda Kumar who should not sing elsewhere during that one year period. After some time, Anand Kumar gets attracted by the perks offered by a newly constructed 5-Star Hotel, 'Hotel

Abhinandan'. He leaves 'Hotel Shiva' and joins 'Hotel Abhinandan'. What is the remedy available to 'Hotel Shiva' against the singer. Anand Kumar compelling him to sing in their hotel during the contract period?

- * Section 42 of the Specific Relief Act, 1963, provides that notwithstanding anything contained in clause (e) of Section 41, where a contract comprises an affirmative agreement to do a certain act, coupled with a negative agreement, express or implied, not to do a certain act, the circumstance that the court is unable to compel specific performance of the affirmative agreement shall not preclude it from granting an injunction to perform the negative agreement provided that the plaintiff has not failed to perform the contract so far as it is binding on him.

So, 'Hotel Shiva' can file a suit for permanent injunction restraining Anand Kumar from singing at 'Hotel Abhinandan' or any where, other than their hotel, during the contract period of one year. As long as the plaintiff has not failed to perform his part of the contract, viz., payment of salaries to Anandakumar as per the contract, the court will pass a decree for permanent injunction preventing or restraining Anandkumar from singing at any other theatre during the contract period.

37

THE SUPPRESSION OF IMMORAL TRAFFIC IN
WOMEN AND GIRLS ACT, 1956

(Act No.104 of 1956)

- 434. *Punishment for letting out any premises with the knowledge that the same is intended to be used as a brothel house*
- 435. *Punishment for living on the earnings of the prostitution of a woman*
- 436. *Punishment for procuring a woman for the purpose of prostitution*
- 437. *Punishment for detaining any woman in any brothel house with intent that she may have sexual intercourse with any man other than her lawful husband*

438. *Punishment for carrying on prostitution in any premises which are within a distance of two hundred meters of any place of public religious worship, etc.*
439. *Punishment for having the custody of a girl for prostitution*
440. *Powers of a Police Officers to search premises, where an offence under Suppression of Immoral Traffic in Women and Girls Act is being committed, without a warrant*
441. *Breach of conditions of licence*

434. Opposite to a famous Temple in Srinivasa Nagar, there is a big residential complex. The owner of that complex is letting out the portions for rent ranging from Rs. 500/- to Rs. 1,000/-. Madhubala, a lady aged about 50 years requested the owner to give a portion on rent. He asked for a rent of Rs. 1,000/- per month and the lady readily agreed to give that rent. The owner of the house knew fully well that Madhubala was running brothels. She brought four young ladies by name Anitha, Priya, Rekha and Deepika and introduced them to the owner and also to the neighbours as her daughters. Several persons started visiting her house. One of the residents of the locality saw several persons coming to her house day and night and suspecting that a brothel house is being run by the lady, complained to the police. He also complained to the owner of the house but he did not take any action. Whether the owner of the house and Madhu Bala who is alleged to be running a brothel house are liable for punishment?

- Under Clause (b) of sub-section (2) of Section 3 of the Suppression of Immoral Traffic in Women and Girls Act, any person who, being the owner or landlord of any premises lets the same or any part thereof with the knowledge that the same or any part thereof is intended to be used as a brothel, shall be punishable on conviction with imprisonment for a term which may extend to two years and fine which may extend to two thousand rupees and in the event of second or subsequent conviction with rigorous imprisonment for a term which may extend to five years and also with fine. Likewise, under clause (a) of sub-section (2) of Section 3, any person who, being the tenant, occupier or person in charge of any premises uses or knowingly allows any other person to use such premises as a brothel, shall be punishable in the same way as in the case of

the owner. So, both the owner of the house as well as Madhubala are liable for punishment under sub-section (2) of Sec.3 of the Suppression of Immoral Traffic in Women and Girls Act.

435. Keerti a boy aged about 19 years, while studying Intermediate discontinued his studies. He developed bad habits and was moving around with prostitutes. He came into contact with call girls and prostitutes and by his experience he had knowledge about the places where prostitutes were living. He also helped them in getting customers. He pretended to be the brother or brother-in-law of the girls. He was collecting tips from the customers and also commission from the girls. In a way he was almost living on the earnings of the prostitutes. He was habitually in the company of prostitutes. He was also exercising control, direction or influence over the movements of prostitutes. On information, the Police watched the movements of this boy and after collecting the material, arrested him and filed a charge sheet against the boy for an offence under Section 4 of the Suppression Immoral Traffic in Women and Girls Act. Whether Keerti is liable for any punishment?

- * Under Section 4 of the Suppression of Immoral Traffic in Women and Girls Act, any person over the age of eighteen years, who knowingly lives, wholly or in part, on the earnings of the prostitution of a woman or girl or is living with or is habitually in the company of a prostitute or is exercising control, direction or influence over the movements of a prostitute in such a manner as to show that such person is aiding, abetting or compelling her prostitution or acting as a tour or pimp on behalf of a prostitute is punishable with imprisonment for a term which may extend to two years or with fine which may extend to one thousand rupees or with both. As Keerti is doing all the above acts, he is liable for punishment under Section 4 of the Suppression of Immoral Traffic in Women and Girls Act.

436. Radhika was a poor girl. She was studying first year B.Com. in Pragathi Degree College, Visakhapatnam by staying in a hostel. As her parents were very poor, she could not purchase proper dresses and could not lead a luxurious life like her friends. In the hostel she made friendship with Divya who was leading a luxurious life. One day, Radhika asked about the

properties of Divya and about her parents. Divya replied that her parents too were very poor, having a small extent of land which was hardly sufficient for the maintenance of the family. Then Radhika expressed a doubt as to how she could maintain such a costly life. Divya told her friend Radhika the secret of her earnings. As she was also hailing from a poor family she could not spend any money for her dresses. One day, she was invited to a 3-Star Hotel and was offered good money to enrol herself as a call girl of that hotel. On seeing similar girls in that hotel, she also joined in that hotel and from that day onwards she was getting good money from that hotel and she was using the same for her dresses, etc. So saying, Divya induced Radhika to go along with her to that hotel for being enrolled as a call girl with the intent that she might become the inmate of that hotel for the purpose of prostitution. Radhika agreed and she also enrolled herself as a call girl and attending the hotel daily. One day, a raid was conducted by the Inspector of Police and in that raid, Radhika and two more girls were caught red-handed. The police filed a charge sheet against the girls and also against the owner of the hotel. Whether any offence has been committed by the owner of that hotel?

Under Section 5 (1) of the Suppression of Immoral Traffic in Women and Girls Act, any person who procures or attempts to procure a woman or girl, whether with or without her consent, for the purpose of prostitution or induces a woman or girl to go from any place with the intent that she may for the purpose of prostitution become the inmate of, frequent, a brothel or takes or attempts to take a woman or girl or causes a woman or girl to be taken from one place to another with a view to her carrying on or being brought up to carry on prostitution or causes or induces a woman or girl to carry on prostitution; shall be punishable on first conviction with rigorous imprisonment for a term of not less than one year and not more than two years and also fine which may extend to two thousand rupees. In the event of a second or subsequent conviction, the punishment is upto five years. As in the above case, the owner of the hotel is inducing college girls into prostitution by offering good money, he is liable for conviction under Section 5 of the Suppression of Immoral Traffic in Women and Girls Act.

437. In Visakhapatnam sea port area, many ships come and

persons travelling in the ships desire to have ladies as they sail from place to place leaving their houses. For that purpose, the hotel people in the port area have been collecting ladies and girls and detaining them in their hotels with intent that they may have sexual intercourse with the sailors who are coming and also for sending them along with the sailors in the ships. In that way some girls were procured from Vijayawada by luring them that they will be provided with cinema opportunities and some of them will be sent to Dubai and other parts of the Arabian countries where they can lead rich life. They were detained in a Hollywood Hotel, which is a 3-Star hotel. One day Inspector of Police conducted a raid in that hotel and found four girls having been detained by the owner of that hotel with an intention that they may be sent for prostitution. The police filed a charge sheet against the owner of that hotel also. Whether the owner is liable for any offence?

Under Section 6 of the Suppression of Immoral Traffic in Women and Girls Act, any person who detains any woman or girl, whether with or without her consent, in any brothel or in or upon any premises with intent that she may have sexual intercourse with any man other than her lawful husband shall be punishable on first conviction with rigorous imprisonment for a term of not less than one year and not more than two years and also with fine which may extend to two thousand rupees and on a second or subsequent conviction for a term of not less than two years and not more than five years and also with fine which may extend to two thousand rupees. So, as the owner of Hollywood Hotel is detaining girls with intent that they may have sexual intercourse with the persons coming from ships, etc., he is liable for punishment under Section 6 of the Suppression of Immoral Traffic in Women and Girls Act.

438. A temple was constructed in Venkateswara Nagar. It has become very popular within a short time and several pilgrims were visiting that temple. Around the temple some commercial and residential complexes were also constructed. Madhumathi, a reputed prostitute was maintaining a big brothel and she was shifting from place to place according to the demand. On coming to know that several pilgrims were visiting the Temple in Venkateswara Nagar, she shifted her business to that place. She took a small house near the temple. She also brought some girls

and kept them in that house for carrying on prostitution. On her advice, the girls were sitting on the verandah of the house and were making gestures by wilful exposure of their persons thereby tempting the persons going that way and also soliciting the persons for the purposes of prostitution. On coming to know about this, the police arrested the girls and also Madhumathi. Whether they are liable for any offence?

Under Section 7 of the Suppression of Immoral Traffic in Women and Girls Act, any woman who carries on prostitution in any premises which are within a distance of two hundred meters of any place of public religious worship, educational institution, etc., is punishable with imprisonment for a term which may extend to three months. Under Section 8 of the said Act, whoever in any public place or within sight of and in such manner as to be seen or heard from any public place by words, gestures, wilful exposure of her person or otherwise tempts or endeavours to tempt the attention of any person for the purpose of prostitution or solicits or molests any person for the purpose of prostitution is liable for punishment which may extend to six months imprisonment or with fine which may extend to Rs. 500/- or with both and in the case of second or subsequent convictions, the punishment is more severe. So, the acts committed by Madhumathi and the girls procured by her, attract the provisions of Sections 7 and 8 of the Suppression of Immoral Traffic in Women and Girls Act and they are liable for punishment under the said Sections of law.

439. Mohd. Sattar has a daughter, Muntaj. He has properties in India. His wife died. He wants to go to Saudi Arabia. So he entrusts his daughter Muntaj to a friend Mohd. Abdul Saleem. The girl is aged about 20 years and is very beautiful. Mohd. Abdul Saleem is a very influential person and several persons of high status and also rich people keep visiting his house often. One day, one Company Director visits his house and sees the girl and asks his friend, Saleem to arrange her for intercourse and he offered very good money. Saleem in turn induces the girl by giving gold necklace and sends her with the Company Director for sexual intercourse. Like that he used to send the girl with several persons and made her as a prostitute. The father of the girl, Mohd. Sattar returns to India and comes to know about his daughter's way of life and gives a complaint against his friend, Mohd. Abdul Saleem. Whether Mohd. Abdul Saleem is liable for

any offence?

Under Section 9 of the Suppression of Immoral Traffic in Women and Girls Act, any person who is having the custody, charge or care of a girl, causes or aids or abets the seduction for prostitution of that girl shall be punishable on first conviction with rigorous imprisonment for a term of not less than one year and not more than three years and also with fine which may extend to one thousand rupees and in the event of second or subsequent conviction, the punishment is more. So, as Mohd. Abdul Saleem, who is having the custody of the girl Muntaj, causes or aids or abets the education for prostitution of that girl, is liable for punishment under Section 9 of the said Act.

440. Information has been received by the Sub-Inspector of Police, Eluru that in Manohar Hotel, prostitution is going on and the owner of that hotel has kept some girls for carrying on the said business. Thereupon, the Sub-Inspector of Police obtained a search warrant from the concerned Magistrate and proceeded to the hotel and searched the hotel. He arrested the owner of that hotel and also four girls who were being engaged in that business. On interrogation, the Sub-Inspector came to know that some more girls were kept by the owner of Manohar Hotel in another house situated at a distance of about one furlong to the hotel. The Sub-Inspector of Police does not have a search warrant for that house. Can he make a search in that house?

Under Sub-section (1) of Section 15 of the Suppression of Immoral Traffic in Women and Girls Act, whenever the Special Police Officer has reasonable grounds for believing that an offence punishable under this Act has been or is being committed in respect of a person living in any premises and that search of the premises with warrant cannot be made without undue delay, such officer may after recording the grounds of his belief, enter and search such premises without a warrant. So, the Sub-Inspector of Police after recording the grounds of his belief, enter and search the house in which prostitution is going on, without a warrant.

441. Ranganatha Swamy is a social worker. He worked for the upliftment of deserted ladies, abandoned children and old persons. He applied to the State Government for grant of a licence to establish protective home and considering his request, the

Government granted a licence. For sometime, Ranganatha Swamy maintained the protective home correctly and achieved the appreciation of one and all. Thereafter, he started to use the protective home as a brothel house, contrary to the terms of the licence. He is inviting several business executives and supplying girls to them. One person in that locality has observed all this and sent up a petition to the Government. Whether the licence can be revoked?

Under Section 21 (7) of the Suppression of Immoral Traffic in Women and Girls Act, where any person or authority to whom a licence has been granted, commits a breach of any of the conditions thereof or any of the provisions of the said Act or where the State Government is not satisfied with the conditions, management or superintendence of any protective home, the State Government may, without prejudice to any other penalty which may have been incurred, for reasons to be recorded, revoke the licence by order in writing after giving the affected party an opportunity to show cause why the licence shall not be revoked. So under this Section, Viz., sub-section (7) of Section 21, as Ranganatha Swamy is changing the protective home as a brothel house contrary to the terms of the licence, the Government can revoke the licence after giving him an opportunity of bearing heard.

38

THE TRANSFER OF PROPERTY ACT, 1882.

(Act No.4 of 1882)

- 442. *Prohibition against the transfer of a mere chance of succession*
- 443. *Fulfilment of condition precedent*
- 444. *Fulfilment of condition subsequent*
- 445. *Transfer by unauthorised person who subsequently acquires interest in property*
- 446. *Rent paid bonafide and in good faith to holder under defective title*
- 447. *Improvements made by bona fide holders under defective titles*

- 448. *Transfer of property pending suit relating to the same property*
- 449. *Part performance*
- 450 & 451. *Rights and liabilities of buyer and seller*
- 452. *Mortgage by deposit of title deeds*
- 453. *References to mortgagers and mortgagees to include persons deriving title from them*
- 454. *Rights to proceeds of compensation on acquisition*
- 455. *Duration of certain leases in the absence of written contract or local usage*
- 456. *Waiver of notice to quit*
- 457. *Right of party deprived of thing received in exchange*
- 458. *Mode of transfer of property by way of gift*
- 459. *Notice of transfer to be in writing and signed*

442. Ravindra Babu has got some self-acquired properties. He has two sons, Vinodh and Bharat. Vinodh died leaving behind his son, Ramesh and a daughter, Monika. Ramesh, the grandson of Ravindra Babu was addicted to vices. Syamala Rao, a neighbour of Ravindra Babu had an idea of knocking away the properties. With this intention in mind, he developed friendship with Ramesh, the grandson of Ravindra Babu and used to advance some nominal amounts now and then for his bad habits like drinking, etc. One day he obtained a sale deed from him for a nominal value of Rs. 50,000/- in respect of properties worth about Rs. 5 lakhs. What is the effect of the sale deed?

Under Section 6 of the Transfer of Property Act, there is prohibition against the transfer of a mere chance of succession, which is based on public policy. If such transfers are allowed, speculators would purchase such chances from possible heirs and there would be an increase in speculative litigation. Under Section 6 (a) of the Transfer of Property Act, the chance of an heir-apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman or any other mere possibility of a like nature cannot be transferred. So, the transfer made by Ramesh, the grandson of Ravindra Babu is hit by Section 6 (a) of the Transfer of Property Act.

443. Raghavendra Rao had no children. He had one sister,

Madhavi and one brother, Krishna Rao. All were married. Madhavi had two sons and Krishna Rao had two daughters. Raghavendra Rao transferred his Ac.5-00 of land in favour of each of the sons of his sister, Madhavi on condition of their (sons of his sister) marrying the daughters of his brother, Krishna Rao with the consent of Krishna Rao and his wife. Krishna Rao and his wife gave consent for the marriage of their first daughter to the first son of Madhavi and the marriage was performed. Even before giving consent for the marriage of her second daughter, the wife of Krishna Rao died and so much so her consent could not be obtained. However, the second son of Madhavi married the daughter of Krishna Rao. Whether both the sons of Krishna Rao are entitled to A.5-00 of land each as transferred by Raghavendra Rao?

Under Section 26 of the Transfer of Property Act, where the terms of a transfer of property impose a condition to be fulfilled before a person can take an interest in the property, the condition shall be deemed to have been fulfilled if it has been substantially complied with. So, in the case of the first son of Madhavi as his marriage was performed after obtaining the consent of Krishna Rao and his wife, the conditional transfer made by Raghavendra Rao is valid and the transfer can be effected. But, so far as the second son of Madhavi is concerned, as the consent of Krishna Rao and his wife cannot be obtained, the second son of Madhavi is not entitled to the land transferred by Raghavendra Rao as the condition has not been fulfilled.

444. Janardhana Rao had one son, Vishnu Murty. Vishnu Murty was married and he had two minor sons. In a road accident Vishnu Murty died, leaving behind him his two sons. Janardhana Rao wanted to perform the marriages of the sons of Vishnu Murty. Then he transferred Ac. 5-00 of the land belonging to him to be delivered to each of his grand sons on their attaining majority or marrying with a clause that they should marry with the consent of his friend or otherwise the said property should go to a Charitable Trust. The first son of Vishnu Murty married on his attaining 17 years of age without the consent of the friend of Janardhana Rao, Whether the transfer to the first son of Vishnu Murty takes effect?

Under Section 28 of the Transfer of Property Act, on a transfer of property an interest therein may be created to

accrue to any person with the condition superadded that in case a specified uncertain event shall happen such interest shall pass to another person. Under Section 29, an ulterior disposition of the kind contemplated by Sec. 28 cannot take effect unless the condition is strictly fulfilled. So, in the above case, since the condition subsequent has not been fulfilled and the first son of Vishnu Murty married during his minority without the consent of the friend of Janardhana Rao, the transfer cannot take effect in his favour but will go to the Charitable Trust.

445. Ramakantha Rao had vast properties. He had four sons, Ashok, Suneel, Bharat and Jagadeesh. All were married. After performing the marriages of his sons, Ramakantha Rao died. His wife pre-deceased him. After the death of their father, the four sons partitioned their joint family properties, viz., houses and shops. One of the shops in which Suneel was carrying on Kirana Business, fell to the share of Bharat but, Bharat agreed and permitted Suneel to continue his business in the shop. Every one in the locality believed that Suneel was the owner of the shop in which he was carrying on his business. Suneel had dire necessity of money for his business. He devised a plan and sold the shop of Bharat which was in his possession and also one house that fell to his share. The sale deed was registered. Bharat did not know about this. He had no children. He had also lost hope of begetting children. So, he bequeathed his properties to his brothers and also his wife. In doing so, the shop which Suneel had sold was bequeathed to him. Sometime after the execution of the will, Bharat also died. Consequently, Suneel had become the owner of the shop. Though he sold that shop, he was still continuing to carry on his business in that shop. After the death of his brother, Bharat and after he became the owner of that shop, he refused to deliver possession of the same to the vendee, stating that at the time when he sold the shop he had no title to it. What is the position?

Under Section 43 of the Transfer of Property Act, where a person fraudulently or erroneously represents that he is authorised to transfer certain immovable property and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transfer may acquire in such property at any time during which the contract of transfer subsists. Since

Suneel, who has separated from the joint family on account of the general partition, sold the shop fraudulently without any right and subsequently acquired interest in the very same property even before the repudiation of the contract, he must make good his sale and so he is estopped to deny the sale under the principle of 'feeding the estoppel'.

446. Prasada Rao had vast properties. He leased out his four houses to four different tenants. He was receiving the rents for the four houses from the respective tenants regularly. After some time Dr. Pratap, who was a Cardiologist and whose wife was also a doctor specialised in Gynaecology, wanted to start a nursing home and he felt that the four houses belonging to Prasada Rao would be convenient for starting a nursing home. However, he had requested Prasada Rao to sell two of his houses and Prasada Rao sold the houses. The tenants in those two houses also vacated the houses. Dr. Pratap started 'Vijaya Nursing Home'. Dr. Pratap wanted to expand the hospital and requested Prasada Rao to sell the remaining two houses to him. After the registration of the sale deed, Dr. Pratap issued notices to the tenants informing them that he had purchased the houses from Prasada Rao and asked them to vacate the houses and in the meantime continue to pay the rents to him. Having received the said notices, still the tenants were sending the rents to the original owner, Prasada Rao by M.O., but the M.Os were being rightly returned by Prasada Rao. Whether Dr., Pratap, who purchased the two houses from the original owner Prasada Rao, is entitled to take steps for the eviction of the tenants on the ground of default of payment of rents and also for arrears of rents?

Under Section 50 of the Transfer of Property Act, no person shall be chargeable with any rents or profits of any immovable property which he has in good faith, paid or delivered to any person of whom he in good faith held such property notwithstanding it may afterwards appear that the person to whom such payment or delivery was made had no right to receive such rents or profits. But in the above case, the two tenants having received the notice of transfer of title to the houses, sent by the vendee the doctor and even after the receipt of the said notices, the tenants were sending the rents by M.O. to the original owner which were being refused and returned, it cannot be said that the tenants acted in good faith or bona fide. So, the doctor is entitled to take steps against the

two tenants for their eviction on the ground of wilful default in payment of rent and also for recovery of arrears of rent.

447. Mohd. Abdul Saleem has got landed property. He went to America and settled there. He executed a general power of attorney in favour of his brother, Mohd. Sattar to look after his landed property situated in his native town, Kurnool by leasing the same to tenants and for sending the amounts every year to him. Accordingly, the lands were given on lease and the tenants were cultivating the lands raising crops and giving the amounts every year regularly to the general power of attorney holder, who in turn used to send the amounts to his brother in America. While so, Mohd. Sattar, the general power of attorney holder having received the rents from the tenants did not send the same to his brother continuously for three years. Then, Mohd. Abdul Saleem came to India and cancelled the general power of attorney. But the tenants did not know of the cancellation of the power of attorney. Not knowing the cancellation of the general power of attorney, the tenants raised sugar cane crop and paid the rents to the general power of attorney bonafide and in good faith. The general power of attorney holder received the amount without telling anything. The original owner, Mohd. Abdul Saleem filed an eviction petition against the tenants and eviction was ordered. But by that date there is standing sugar cane crop on the lands. Whether the tenants are entitled to the standing crop?



Since the tenants bona fide and believing in good faith that they are the tenants, raised the crop not knowing about the cancellation of the general power of attorney, believing that he is absolutely entitled to the crop so raised and if he is subsequently evicted there from by any person having a better title, the tenant is entitled to the standing crop and he can take the same after paying the stipulated rent to the original owner. Section 51 of the Transfer of Property Act protects the tenants and they are entitled to the crops raised by them in good faith.

448. Vijayavardhana Rao had garden land measuring Ac. 5-00. He entered into an agreement with Purushottam Rao for sale of the said garden for Rs. 50,000/-. He had also executed an agreement of sale and received an advance of Rs. 25,000/- and agreed to receive the balance at the time of registration of the sale deed. A time limit of six months was fixed for payment of the balance and for registration. Immediately after the sale transaction, HUDA started constructing a big colony by laying roads by the side of the garden of Vijayaraghava Rao. Consequently, the price of the land in that vicinity had raised upto a great extent. Keeping this abnormal hike of the prices in view, Vijayavardhana Rao refused to receive the balance of sale consideration when the vendee, Purushottam Rao had offered the amount and he had also refused to register the sale deed. Thereupon, Purushottam Rao filed a suit for specific performance of the agreement to sell. On coming to know about the filing of the suit, Vijayavardhana Rao had transferred the said garden in favour of his near relative without any consideration with intent to defraud or defeat the earlier agreement executed by him and the consequent filing of the suit taking advantage of the fact that the summons in that suit had not been served on him. He took the plea that he had no knowledge of the suit. What is the effect of the subsequent transfer?

Under Section 52 of the Transfer of Property Act, during the pendency of any suit or proceeding in any court which is not collusive and in which any right to immovable property is directly and specifically in question, such property cannot be transferred or otherwise deal with by any party to the suit or proceeding so as to affect the rights of any other party thereto under the decree or order which may be made therein. Under the explanation to Section 52, the pendency of a suit or

proceeding shall be deemed to commence from the date of presentation of the plaint or the institution of the proceeding in a court of competent jurisdiction. Under Section 53 also, every transfer of immovable property made with intent to defeat or delay the creditors of the transferor shall be voidable at the option of any creditors so defeated or delayed.

So, the transfer of property, i.e., garden which is the subject matter of the suit based on an agreement of sale, during the pendency of the said suit which is made with intent to defeat or delay the creditors viz., Purushottam Rao, cannot be transferred under Sec. 52. However, under Section 53, such transfer shall be voidable at the option of the creditors so defeated.

449. Surender Nath had 1000 square yards of site in Jeedimetla. He had agreed to sell the said site to Amarnath for Rs. 1 lakh and the vendee, Amarnath paid Rs. 50,000/- as advance of sale consideration and in part performance of the agreement he was put in possession of the said site and the agreement was accordingly executed and it was further agreed by Amarnath to pay the balance of sale consideration within six months and on receipt of the balance of sale consideration, Surender Nath had agreed to execute a regular sale deed and get it registered. After the sale of site by Surender Nath, construction of an industrial colony started by the side of the site sold by Surender Nath and consequently the price of the surrounding sites increased to a great extent. Surender Nath developed an evil idea of claiming higher rate and refused to receive the balance of sale consideration offered by the vendee, Amarnath and refused to register the sale deed. What is the remedy available to Amarnath?

Where any person contracts to transfer for consideration any immovable property by writing signed by him and the transferee has, in part performance of the contract, taken possession of the property and the transferee has performed his part of the contract, under Section 53-A of the Transfer of Property Act, the transferor shall be debarred from enforcing against the transferee any right in respect of the property of which the transferee has taken possession and the transferee can file a suit against the transferor for specific performance of the agreement to sell.

450. Krishna Veni had vast properties. During her life time,

she gifted Ac. 5-00 of land to the Anjaneya temple. Thereafter she died. After her death her entire property was devolved upon her daughter, Prabhavathi. She knew about the gift of Ac. 5-00 of land by her mother to the Anjaneya temple. Suppressing the said gift, she entered into an agreement for sale of Ac. 10-00 of land including the land of Ac. 5-00 gifted to the temple and received the sale consideration. She also suppressed the documents relating to the gift which were available with her. Subsequently, the vendor came to know of the gift made by her mother, Krishna Veni when he was about to take steps for ploughing the land. What can he do?

Under clause (a) of sub-section (1) of Section 55 of the Transfer of Property Act, the seller is bound to disclose to the buyer any material defect in the property or in the seller's title thereto and produce to the buyer all documents of title to the property which are in seller's possession, and an omission to make such disclosures is fraudulent one and the vendee is entitled to recover the amount paid by him and also to rescind the contract.

451. Ramana Rao had 1000 square yards of site in Ramanthapur. The Government sought to acquire the said site for the construction of a Tel. Com Building. The Government requested the Collector to initiate proceedings under the Land Acquisition Act for the acquisition of the said site. The price of house sites in that area is ranging between Rs. 500/- and Rs. 1000/- per square yard. On enquiries, Ramana Rao came to know that after acquisition he will get good money in the shape of solatium @ 30% and additional interest at 12% on the market value. Ramakrishna Rao was residing next to his house and he was also having a site measuring 1000 square yards lying next to the site of Ramana Rao. His site also was proposed for acquisition along with the site of Ramana Rao. But Rama Krishna Rao did not know about the proposed acquisition of his site and also about the benefits and amounts that might be given after acquisition. Ramana Rao, keeping in mind that he would get more money if the site was acquired by the Government and he would not get such a huge money if it was sold to private persons, thought of grabbing the adjacent site of Ramakrishna Rao and in fact trespassed into that site by putting sheds, etc. When Ramakrishna Rao objected Ramana Rao put up a false plea that the said site belonged to his father. Ramana Rao created such an

attitude in the mind of Ramakrishna Rao to part with the site even for a nominal price. Elders intervened and ultimately Ramakrishna Rao agreed to part with the site in favour of Ramana Rao for a sum of Rs. 1 lakh though it costs more than Rs. 5 lakhs, and accordingly Ramakrishna Rao executed a sale deed in favour of Ramana Rao. After the said transaction, both the sites of Ramana Rao and also that of Ramakrishna Rao which was sold to Ramana Rao were acquired by the Government and compensation at the rate of Rs. 500/- per square yard and solatium @ 30% and additional interest at 12%, was granted. On coming to know about this, Ramakrishna Rao wanted to take legal action against Ramana Rao. Whether Ramakrishna Rao has got any legal remedy?

Under Section 55 (5) (a) of the Transfer of Property Act, the buyer is bound to disclose to the seller any fact as to the nature or extent of the seller's interest in the property of which the buyer is aware but of which he has reason to believe that the seller is not aware and which materially increases the value of such interest. An omission to make such disclosure amounts to fraudulent transaction. As Ramana Rao, the buyer having known about the proposed acquisition of site by the Government and also about the benefits or compensation that may be awarded on account of acquisition and having failed to disclose the same to Ramakrishna Rao at the time of sale and on the other hand put the seller under darkness about the proposed acquisition, the transaction becomes a fraudulent one and Ramakrishna Rao can question the same in a court of law.

52. Ananda Kumar obtained a loan of Rs. 50,000/- from Andhra Bank by depositing his title deeds in respect of a site measuring 1000 square yards situated in a well developed area of Meerpet. Ananda Kumar did not repay the amount borrowed by him under the mortgage even after two years. The Bank issued registered notice and thereafter, filed a suit against Ananda Kumar for recovery of the amount due from him. Ananda Kumar resisted the suit claim by filing a written statement contending, *inter alia*, that the suit mortgage bond was not registered though ought to be registered and so the Bank was not entitled to proceed against him for recovery of the amount due under an unregistered mortgage bond. What is the position?

Under Section 58 (f) of the Transfer of Property Act, where a person delivers to a creditor or his agent documents of title to immovable property with intent to create a security thereon the transaction is called a mortgage by deposit of title deeds. Under Section 59, when the principal money secured is Rs. 100/- and upwards, a mortgage, other than a mortgage by deposit of title deeds, can be effected only by a registered instrument signed by the mortgagor and attested by at least two witnesses. In the above case, Ananda Kumar has obtained the loan from the Bank by deposit of his title deed and as Section 59 requires that a mortgage, other than a mortgage by deposit of title deeds, can be effected only by a registered instrument, the objection raised by Ananda Kumar in his written statement does not hold and the suit can be maintained.

453. Prabhakara Rao borrowed a sum of Rs. 10,000/- from Canara Bank by depositing his title deeds relating to his land measuring Ac. 3-00. He has a wife, two sons and a daughter. Without discharging that debt he died. As the amount was not discharged even though the limitation period is fast approaching, the Bank filed a suit after issuing a registered notice, against the legal representatives of Prabhakara Rao, viz., wife, two sons and one daughter. The defendants raised a plea that they were not liable for the suit amount as they did not borrow the amount and they did not execute the suit mortgage bond, and that the mortgage executed by Prabhakara Rao did not bind them. Can the defendants raise such a contention?

Under Section 59-A of the Transfer of Property Act, reference to mortgagors and mortgagees shall be deemed to include references to persons deriving title from them respectively. So, after the death of Prabhakara Rao, the defendants have derived the properties including the suit mortgage property and so they are liable to the suit debt and the contention raised by them cannot stand.

454. Ramachandrayya had 10 acres of land. He obtained a loan of Rs. 25,000/- from the State Bank of India by depositing the title deeds and he did not repay the amount due under the mortgage. In the meantime, the Government proposed to acquire large extent of land including the 10 acres of land of Ramachandrayya which was pledged to the State Bank of India, for construction of additional reservoir. After following the

procedure as contemplated under the Land Acquisition Act, the Government acquired the land of Ramachandrayya and some other lands, and fixed the compensation. In the meantime, the Bank filed a suit against Ramachandrayya and obtained a preliminary decree and thereafter a final decree. Whether the Bank can realise the amount due under the decree from out of the compensation payable to Ramachandrayya?

Under sub-section (2) of Section 73 of the Transfer of Property Act, where the mortgaged property or any part thereof is acquired under the Land Acquisition Act, 1894, or any other enactment for the time being in force providing for the compulsory acquisition of immovable property, the mortgagee shall be entitled to claim payment of the mortgage money in whole or in part out of the amount due to the mortgagor as compensation. So the Bank can claim the amount due under the decree from out of the compensation payable to Ramachandrayya.

455. Raja Mohana Rao has got flour mill and houses at Kurupam. He got two sons and one daughter. The daughter was studying M.B.B.S. at Vizag and one of his sons was doing B.E. at Vizag, and the second son was studying intermediate. Raja Mohana Rao wanted to join his second son also in M.B.B.S. by giving him good coaching for EAMCET. Keeping in view the education of his children, Raja Mohana Rao shifted his family to Visakhapatnam. As there would be none at his native place Kurupam to look after his mill and also the house, he leased out the mill to Sambasiva Rao and the house to Seethapathi, a teacher. No period was fixed for the lease and there was no such usage also in that village. The tenants used to send the rents regularly. After a period of about five years, the education of the children of Raja Mohana Rao was completed and so he wanted to come back to his native place. So, he orally requested the tenants Sambasiva Rao who was running the mill on lease and also the teacher who was in possession of the house to vacate the respective premises for his personal use and occupation. Both the tenants refused to vacate the premises. What is the position and whether they have got any right to continue in possession as tenants?

Under Section 106 of the Transfer of Property Act, in the absence of a contract or local law or usage to the contrary, a lease of immovable property for agricultural or manufacturing

purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months' notice expiring with the end of a year of the tenancy; and a lease of immovable property for any other purposes shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days notice expiring with the end of a month of tenancy. So, Raja Mohana Rao can give a notice, in writing signed by him or on his behalf, to the tenants and thereafter he can approach the court for their eviction.

456. Jagadeeswara Rao had a house. He leased it out to Parameswara Rao on a monthly rent of Rs. 1,000/-. After some time, Jagadeeswara Rao required the house for his personal occupation and requested the tenant, Parameswara Rao to vacate the house. As the tenant did not vacate the house, he issued a notice requiring the tenant to vacate the house within one month. For two months the owner did not accept the rent. Thereupon, the tenant after receipt of the notice sent the rents including the rents due for the two months by M.O. and the owner without any protest accepted the rents and received the same. Thereafter also for another two months the owner received the rents paid by the tenant personally. Thereupon he filed a petition for eviction of the tenant. The tenant took an objection that there was no notice issued to him. What is the position?

Under Section 113 of the Transfer of Property Act, a notice given under Section 111 clause (h) is waived with the express or implied consent of the person to whom it is given by any act on the part of the person giving it showing an intention to treat the lease as subsisting. So, as Jagadeeswara Rao, the owner of the house has accepted the rents sent or paid by the tenant, Parameswara Rao without any protest even after the issuance of the notice by him, under Section 113 the notice issued by the owner to the tenant is deemed to have been waived and so, a fresh notice is required to be given to the tenant calling upon him to vacate the premises.

457. Raj Kumar has a house in Plot No. 101 of Road No. 12 of Shiva Nagar. Gopal has a house in Plot No. 205 of Road No. 13 of the same colony. Raj Kumar has also got a house plot bearing plot No. 206 of Road No. 13 which is abutting the house of Gopal. It is 300 square yards. Likewise, Gopal is also having an

ancestral site of 300 square yards in plot No. 102 of Road No. 12 of Shiva Nagar and it is abutting the house of Raj Kumar. Gopal has another brother who is also entitled to a share in the said site. Both Raj Kumar and Gopal agreed to exchange their respective sites and accordingly, exchange deeds were executed by them. Gopal did not disclose at the time of exchange that his site in plot No. 102 is an ancestral site and that his brother is also having a share in it. Without disclosing these facts, Gopal himself has executed the exchange deed. While Raj Kumar was about to construct a house in the exchanged plot which is by the side of his house, the brother of Gopal raised an objection stating that he is entitled to half share in that plot. Ultimately, that dispute resulted in the filing of a suit. In such circumstances whether Raj Kumar can claim back his site which is situated by the side of the house of Gopal?

- * Under Section 119 of the Transfer of Property Act, if any party to an exchange or any person claiming through or under such party is by reason of any defect in title of the other party deprived of the thing or any part of the thing received by him in exchange, such other party is liable to him or any person claiming through or under him for loss caused thereby or at the option of the person so deprived for the return of the thing transferred. Since there is defect in the title of Gopal in the site, Raj Kumar is entitled, if he so desires, for the return of the site transferred in favour of Gopal.

458. Rajyalakshmi, aged about 60 years, is a widow having considerable properties, both movable and immovable. She has one grand daughter through her son and one grandson through her daughter. In memory of her, she wants to gift one gold chain to her grand daughter, worth about Rs. 25,000/- and Ac. 5-00 of land in favour of her grand son. Both the donees, i.e., the grand son and grand daughter are majors. On the advice of the document writer, Rajyalakshmi executed one gift deed in favour of both the grand son and grand daughter. However, the grand son did not accept the gift of land to him and he refused to take possession of the gifted land but the grand daughter took delivery of the gold chain. What is the effect of the gift deed?

- * Under Section 123 of the Transfer of Property Act, for the purpose of making a gift of immovable property, the transfer must be effected by a registered instrument signed by or on

behalf of the donor and attested by at least two witnesses and the transfer of movable property by way of gift may be effected either by a registered instrument signed as in the case of immovable property or by delivery. Under Section 125 of the Transfer of Property Act, a gift of a thing to two or more donees of whom one does not accept it, is void as to the interest which he would have taken had he accepted. So, the gift deed executed by Rajyalakshmi for both the gifts is valid but as the grandson did not accept the gift, it is void so far as the gift of land to the grandson is concerned and it is valid so far as the gift of movable property, viz., gold chain to the grand daughter is concerned.

459. Hari Kishan Agarwal executed a promissory note for Rs. 20,000/- in favour of Kishore Lal after receiving the said amount. Kishore Lal has to pay Rs. 20,000/- to Deen Dayal. When Deen Dayal insisted Kishore Lal for payment of the amount due to him, Kishore Lal transferred the promissory note standing in his favour executed by Hari Kishan Agarwal. But notice of transfer has not been sent to Hari Kishan Agarwal either by Kishore Lal or Deen Dayal. Kishore Lal, suppressing the factum of transfer, demanded Hari Kishan Agarwal for the payment of money due under the promissory note and the latter has paid the entire amount and obtained a receipt from Kishore Lal. After some time, Deen Dayal in whose favour the promissory note of Hari Kishan Agarwal is transferred demanded Hari Kishan Agarwal for the promissory note amount and ultimately he has filed a suit also. Whether Hari Kishan Agarwal is liable to pay the suit amount to Deen Dayal?

Under Section 131 of the Transfer of Property Act, every notice of transfer of actionable claim shall be in writing, signed by the transferor or his agent duly authorised in this behalf or in case, the transferor refuses to sign by the transferee or his agent and shall state the name and address of the transferee. In the above case, as notice of transfer of the promissory note executed by Hari Kishan Agarwal was not given to Hari Kishan Agarwal, as required under Section 131 of the Transfer of Property Act and as Kishore Lal, suppressing the factum of transfer of promissory note, collected the amount from Hari Kishan Agarwal, Deen Dayal in whose favour the promissory note is transferred is entitled to proceed against Kishore Lal in a court of law.

THE WILD LIFE (PROTECTION) ACT, 1972
(Act No.53 of 1972)

460. *Killing or wounding of any wild animal in good faith in self defence*
461. *Maintenance of records of wild animals killed or captured and consequences of its failure*
462. *Restrictions on hunting*
463. *Consequences of abetment of contravention of the provisions of the Act*

460. Bahinsa village is situated by the side of the reserve forest which is reserved for tigers. One of the tigers in the said forest becomes a man eater and kills many persons in the neighbouring villages. One day Devanna, who earns his living by selling firewood goes to the forest with an axe in his hand. The tiger attacks him. The man bravely kills the tiger with the axe in his hand in self-defence. The Forest officials filed a criminal complaint against Devanna for killing the tiger. What would be the position?

- * Under sub-section (2) of Section 11 of the Wild Life (Protection) Act, 1972, the killing or wounding in good faith of any wild animal in defence of oneself or of any other person shall not be an offence. So, the act of killing the tiger committed by Devanna in his self-defence shall not be an offence.

461. Krishna Kumar has obtained a licence, as required under Section 9 of the Wild Life (Protection) Act, 1972, to hunt wild animals in the forest area. Under Section 10 of the said Act, he has to maintain records of wild animals killed or captured. One day during hunting, Krishna Kumar killed a wild pig and captured a deer and he has not intimated to the Authorised Officer about his killing the wild pig and capturing the deer, as required under the conditions of the licence. He also did not surrender the records maintained by him within fifteen days from the date of expiry of the licence. Whether Krishna Kumar

has committed any offence?

Under sub-section (1) of Section 10 of the Wild Life (Protection) Act, 1972, the holder of every licence shall maintain a record, containing such particulars as may be prescribed, of the wild animals, other than vermin, killed or captured by him during the currency of the licence.

Under sub-section (2) of Section 10, when any animal, specified in Schedule II or Schedule III is killed, wounded, or captured by the holder of a licence, he shall, not later than fifteen days from the date of such killing, wounding or capture, or before leaving the area specified in the licence, whichever is earlier, intimate, in writing, to the Chief Wild Life Warden or the Authorised Officer, the prescribed particulars of such animal killed, wounded or captured by him.

Under sub-section (3) of Section 10, the holder of every licence shall, not later than fifteen days from the date of expiry of such licence, surrender the records maintained by him under sub-section (1) and the licence to the Chief Wild Life Warden or the Authorised Officer, and shall sign a declaration, in the prescribed form certifying the accuracy of the records maintained by him under sub-section (1).

Under sub-section (1) of Section 51 of the said Act, any person who contravenes any provision of this Act or any rule or order made thereunder or who commits a breach of any of the conditions of any licence or permit granted under this Act, shall be guilty of an offence against this Act, and shall, on conviction, be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to two thousand rupees or with both.

As Krishna Kumar, who is the holder of a licence granted under Section 9 of the Wild Life (Protection) Act, 1972, did not maintain records containing particulars of the wild animals killed or captured by him during the currency of the licence, as required under sub-section (1) of Section 10; as he did not intimate, in writing, to the Authorised Officer the prescribed particulars of such animals killed, or captured by him as required under sub-section (2) of Section 10 and as he did not surrender the licence within fifteen days from the date of expiry of such licence, he is liable for conviction and sentence as prescribed under Section 51 of the Act.

462. Pratap Rudra Dev has got a gun licence. He obtained the gun licence very recently. He does not know which type of animals can be hunted and under what circumstances. He is also an illiterate. He came to know that one person in his village was convicted for hunting and killing a bear whereas one person, who killed a tiger, was not punished. He approached the Authorised Officer to know the restrictions of hunting. What are the restrictions on hunting?

Section 17 of the Wild Life (Protection) Act, 1972, deals with the restrictions on hunting. According to sub-section, (1) of Section 17, no person shall

- (a) hunt any wild animal, from or by means of, a wheeled or a mechanically propelled vehicle on water or land or by aircraft;
- (b) use an aircraft, motor vehicle or launch for the purpose of driving or stampeding any wild animal;
- (c) hunt any wild animal with chemicals, explosives, nets, pitfalls, poisons, poisoned-weapons, snares or traps, except in so far as they relate to the capture of wild animals under a Wild Animal Trapping Licence;
- (d) hunt any special game or big game other than, with a rifle, unless specially authorised by the licence to hunt with a shot-gun using single-slug bullets;
- (e) for the purpose of hunting, set-fire to any vegetation;
- (f) use any artificial light for the purpose of hunting, except when specially authorised to do so under a licence in the case of carnivora over a kill;
- (g) hunt any wild animal during the hours of night, that is to say, between sun-set and sun-rise, except when specially authorised to do so under a licence in the case of carnivora over a kill;
- (h) hunt any wild animal on a salt-lick or water hole or other drinking place or on path or approach to the same, except sand-grouse and water-birds;
- (i) hunt any wild animal on any land not owned by a Government, without the consent of the owner or his agent or the lawful occupier of such land;
- (j) not with standing that he holds a licence for the purpose, hunt any wild animal during the closed time referred to in Section 16;

- (k) hunt, with the help of dogs, any wild animal except water-bird, chakor, partridge or quail.

Further, he has to obtain a licence under Section 9 of the Wild Life (Protection) Act, 1972, for hunting any wild animal specified in Schedule II, Schedule III or Schedule IV and in accordance with the conditions specified in the licence granted.

Under sub-section(2) of Section 11, the killing or wounding in good faith of any wild animal in defence of oneself or of any other person shall not be an offence. Provided that nothing in this sub-section shall exonerate any person who, when such defence becomes necessary, was committing any act in contravention of any provision of this Act or any rule or order made thereunder.

463. Bhupesh Goud possessed a gun. However, he did not obtain any licence under Section 9 of the Wild Life (Protection) Act, 1972, for hunting wild animals. One day, he entered into a forest along with his servant, Bheemanna, who is also having a gun and on seeing a group of deer, he attempted to hunt deer and also asked his servant to hunt the animals. The Forest officials found them hunting deer and booked a case against them. Whether Bhupesh Goud and his servant, Bheemanna have committed any offence?

Under Section 52 of the Wild Life (Protection) Act, 1972, whoever attempts to contravene, or abets the contravention of, any of the provisions of this Act, or any rule or order made thereunder shall be deemed to have contravened that provision or rule or order, as the case may be.

Under sub-section (1) of Section 51, any person who contravenes any provision of this Act or any rule or order made thereunder or who commits a breach of any of the conditions of any licence or permit granted under this Act, shall be guilty of an offence against this Act and shall, on conviction, be punishable with imprisonment for a term which may extend to two years or with fine which may extend to two thousand rupees, or with both.

As Bhupesh Goud, without a licence obtained under Section 9, attempted to hunt the wild animals and as he has also abetted his servant, Bheemanna to commit the said offence, he is liable for punishment under Section 51 of the Act.

PART - II

40

THE ANDHRA PRADESH BORSTAL SCHOOLS ACT, 1925

(Act No.5 of 1925)

- 464. *Passing of sentence of detention of the offenders in a Borstal School*
- 465. *Power of Inspector General to transfer any adolescent offender to Borstal school*
- 466. *Power of State Government to transfer any offender to Borstal school*
- 467. *Power of a Police Officer to arrest an escaped prisoner in Borstal School without warrant*

464. Mukesh and Raju are friends. They committed theft of a tape recorder from a car. They were caught red-handed. Police arrested them and files a charge sheet against them for an offence under Section 379, I.P.C. Both of them confessed the guilt. On their own voluntary confession of guilt, the court convicted them under Section 379, I.P.C. But as regards the sentence to be imposed, the court thought of sending them to Borstal School and so, the Magistrate called for a report from the District Probation Officer. After conducting enquiry, the District Probation Officer sent his report stating that it was a first offence and if they were detained in prison they would come into association with persons of bad character and so the District Probation Officer recommended to pass a sentence of detention in a Borstal School for a term which shall not be less than two years and shall not exceed five years but in no case extending beyond the date on which the adolescent offender will attain the age of twenty three years. Whether the Magistrate can sent the two persons to Borstal School?

Under Section 8 of the A.P. Borstal Schools Act, the Magistrate shall consider any report of the Probation Officer as to the suitability of the case for treatment in a Borstal School and shall be satisfied that the character, state of health and mental

condition of the offender and other circumstances of the case are such that the offender is likely to profit by such instruction and discipline and pass a sentence of detention of the offenders in a Borstal School for a term which shall not be less than two years and shall not exceed five years but in no case extending beyond the date of which the adolescent offender will attain the age of twenty three years.

465. Bharani Kumar, a boy aged about 16 years, happened to see his mother sleeping with a stranger. Immediately, he inflicted injuries on that man with a knife. Thereupon, on a complaint given by that man, police investigated into the case and filed a charge sheet against Bharani Kumar. After trial, the Court convicted that boy for an offence under Section 362, I.P.C. and sentenced him to undergo imprisonment for three years. Pursuant to the conviction and sentence, the boy was sent to prison. While he was undergoing sentence of imprisonment he proved to be a very good boy. Observing his good behaviour in the jail, the Inspector General was very much impressed and wanted to send him to Borstal School. Whether he has got any power to do so?

Under Section 10 of the A.P. Borstal Schools Act, the Inspector General may, if satisfied that any adolescent offender undergoing imprisonment in consequence of sentence might with advantage be detained in a Borstal School, direct that such person shall be transferred from prison to a Borstal school to serve whole or any part of the unexpired residue of his sentence.

466. Raghu, a boy aged about 16 years, was not being treated well by his parents. His father was always spending time in his concubine's house neglecting the welfare of his mother. One day, his mother fell sick. The boy went to the house of the concubine of his father to call him. When he went to the house of the concubine of his father, he saw his father sleeping with the concubine. Immediately, he got angry and took out a stick and beat his father on his head and his father died. After investigation into the case, the Police filed a charge sheet against the boy for an offence under Section 302, I.P.C. and the Court after trial, convicted the boy for the said offence and sentenced him to undergo imprisonment for life. Whether the Government has got the power to send the boy to Borstal School?

Under Section 10-A of the A.P. Borstal Schools Act, the State

Government has got the power to transfer the offender to a Borstal School to serve the whole or any part of the unexpired residue of his sentence.

467. Sreenu, a boy aged about 16 years, was convicted for the offence under Section 379, I.P.C. and in lieu of sentence of imprisonment he was sent to Borstal School. While he was in the Borstal school, he learnt tinkering, etc., and he was granted licence and kept under a responsible person who was running an industry. While he was under the custody of that person, he escaped from his custody. What has to be done?

Under Section 18 of the A.P. Borstal Schools Act, if any inmate escapes from a Borstal School or if any inmate absent on licence from a Borstal School removes himself from the supervision of the officer, institution, society or person under which he was by licence permitted to live or fails to return from such supervision to the Borstal School, a Police Officer, not below the rank of a Sub-Inspector of Police may, without orders from a Magistrate and without warrant, arrest him and take him back to the Borstal School and his licence shall be forfeited with effect from the date of his escape or failure to return, as the case may be.

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THE ANDHRA PRADESH BUILDINGS (LEASE,
RENT AND EVICTION) CONTROL ACT, 1960

(Act No. 15 of 1960)

468. *Increase in rent when there is enhancement of house tax*

469. *Right of tenant to deposit rent when refused by landlord*

470. *Right of tenant to deposit rent in certain cases*

471. *Eviction of tenant on the ground of wilful default*

472. *Payment or deposit of rent during the pendency of proceedings for eviction*

473. *Landlord not to interfere with the amenities enjoyed by the tenant*

474. *Failure by landlord to make necessary repairs*

468. Ravikanth, who has been working as Mandal Revenue Officer in Warangal, has been transferred to the Secretariat, Hyderabad. On his transfer, he has taken a house belonging to Ramaprasada Rao on rent. Though they have agreed for a rent of Rs. 1,000/- per month, differences arise between them and the matter is ultimately referred to Rent Controller for fixation of fair rent. After following the due procedure, fair rent at the rate of Rs. 600/- is fixed and that rent is being accepted by the landlord. While so, the Municipal Corporation* increases house taxes and the existing tax of Rs. 1500/- is enhanced to Rs. 2,000/-. The landlord demands the tenant to enhance the rent by Rs. 500/- as the house tax was enhanced by Rs. 500/-. The tenant refuses to pay the enhanced rent saying that the rent was already fixed by the Rent Controller. Whether the landlord has got any remedy to claim the enhancement of the rent as the taxes were enhanced by the Corporation?

- * Under Section 6 (1) of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960, where the amount of taxes and cesses payable by the landlord in respect of any building to a local authority is enhanced after the fixation of the fair rent under Section 4, the landlord shall be entitled to claim half of such excess from the tenant in addition to the rent payable for the building. Provided that such excess shall not be recoverable in so far as it has resulted from an increase of rent in respect of the building.

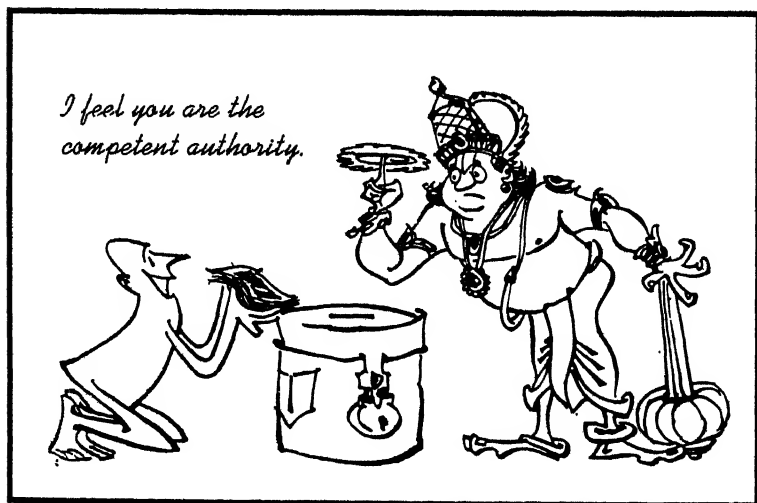
So, as there was enhancement of house tax after fixation of the fair rent, under sub-section (1) of Section 6, the landlord shall be entitled to claim half of such excess from the tenant in addition to the rent payable by the tenant.

469. Sanjeevanaidu is the owner of a house. He gave it on rent to Sudhakar on a monthly rent of Rs. 750/-. The tenant, Sudhakara Rao used to pay the agreed rent to the landlord regularly and obtained the receipts. After two years, differences arose between the landlord and the tenant. Since then the landlord refused to give receipts and on the other hand he insisted the tenant to vacate the house and the tenant refused to vacate the house. The tenant issued a notice requiring the landlord to specify the name of the Bank into which the rent might be deposited by the tenant to the credit of the landlord. The landlord having received the said notice did not specify the bank.

Then the tenant sent the amount by money order after deducting the money order commission and continued to remit the rent. After two months, the landlord refused to receive the rent remitted by money order also. What can the tenant do under such circumstances?

If the landlord refuses to receive the rent remitted by money order, under sub-section (5) of Section 8 of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960, the tenant may deposit the rent before such authority and in such manner as may be prescribed and continue to deposit any rent which may subsequently become due in respect of the building before the same authority and in the same manner and the amount deposited may, subject to such conditions as may be prescribed, be withdrawn by the person held by the controller, to be entitled to the amount on application made by the landlord to the controller in that behalf.

470. Sujathamma is the owner of a house. She gives this house to Manohar, an employee on a monthly rent of Rs. 750/-. The tenant used to pay the monthly rents regularly to the landlady. After some time, the landlady Sujathamma died. Her grand son (son's son) and her daughter's son put rival claims to the house, claiming that he is entitled to the rent. What has to be done by the tenant in those circumstances?



Under sub-section (3) of Section 9 of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960, when any bonafide doubt or dispute arises as to the person who is entitled to receive the rent for any building, the tenant may deposit such rent before such authority and in such manner as may be prescribed and shall report to the Controller, the circumstances under which such deposit was made by him and may continue to deposit any rent which may subsequently become due in respect of the building before the same authority and in the same manner until the doubt is removed or the dispute is settled by the decision of a competent Court or by a settlement between the parties or until the Controller makes an order under clause (b) of sub-section (4), as the case may be.

As there is a bonafide dispute as to the person who is entitled to receive the rent, under sub-section (3) of Section 9, the tenant may deposit the rent before such authority as may be prescribed and shall report to the Controller the circumstances under which such deposit was made by him and may continue to deposit the subsequent rent.

471. Satya Murty is the owner of a house. He gives it on rent to Vishnu Murty on a monthly rent of Rs. 500/-. After two years, Vishnu Murty started committing default in payment of rent. Though the landlord demanded the tenant to pay the rent, the tenant is postponing payment on some pretext or the other. Like that he does not pay the rents for one year. The landlord asks the tenant to vacate the house but the tenant refuses to vacate the house. What has to be done by the landlord, Satya Murty?

Under sub-section (2) of Section 10 of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960, a landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the application, is satisfied that the tenant has not paid or tendered the rent due by him in respect of the building within fifteen days after the expiry of the time fixed in the agreement of tenancy with his landlord or in the absence of any such agreement, by the last day of month next following that for which the rent is payable.

So, under sub-section (2) of Section 10, the landlord has to

file an application before the Rent Controller for eviction of the tenant on the ground of wilful default in payment of rent. If the landlord can prove wilful default in payment of the rents by the tenant for the last one year, as pleaded by him, the Controller shall pass a decree of eviction of the tenant from the house.

472. Venkateswara Rao has got a house and he gave it on rent to Harshavardhana Rao on a monthly rent of Rs. 1,000/-. The tenant did not pay the rent for two months. There were differences between the landlord and the tenant in that connection. Thereupon, the landlord filed a petition in the Rent Controller's Court for eviction of the tenant on the ground of wilful default. There is a dispute with regard to the arrears of rent. What has to be done?

Under Section 11 (1) of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960, no tenant against whom an application for eviction has been made by a landlord under Section 10, shall be entitled to contest the application before the Controller under that section or to prefer any appeal under Section 20 against any order made by the Controller on the application, unless he has paid to the landlord or deposits with the Controller or the Appellate Authority, as the case may be, all arrears of rent due in respect of the building upto the date of payment or deposit and continues to pay or deposit any rent which may subsequently become due in respect of the building, until the termination of the proceedings before the Controller or the Appellate Authority, as the case may be. Under sub-section (3), where there is any dispute as to the amount of rent to be paid or deposited under sub-section (1), the Controller or the appellate authority, as the case may be, shall on application made to him either by the tenant or by the landlord and after making such inquiry as he deems necessary, determine summarily the rent to be so paid or deposited.

Under sub-section (4), if any tenant fails to pay or to deposit the rent, the Controller or the Appellate Authority shall, unless the tenant shows sufficient cause to the contrary, stop all further proceedings and make an order directing the tenant to put the landlord in possession of the building.

473. Ram Pratap took the house of Omprakash on a monthly

rent of Rs. 1,000/-. It was agreed that the landlord, Omprakash has to pay water charges and house taxes for the building and that the electricity charges shall be paid by the tenant, Ram Pratap. Accordingly, three years passed. Thereafter disputes arose between the two families and the landlord. Omprakash asked the tenant, Ram Pratap to vacate the house and the tenant refused to vacate the house as he was regularly paying the rent. Thinking that if the tenant was not given water he might vacate the building, he disconnected the meter of the water tap as the main was in his house. Is there any remedy for the tenant, Ram Pratap against the action of the landlord?

Under sub-section of Section 14 of (1) of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960, no landlord shall, without just or sufficient cause, cut off, or withhold any of the amenities enjoyed by the tenant. Under sub-section (2), if the landlord has contravened the provisions of this section, a tenant in occupation of the building may make an application to the Controller complaining such contravention. Under sub-section (3), if the tenant satisfies the Controller that the amenities were cut off or withheld without just or sufficient cause, the Controller may pass an interim order, directing the landlord to restore the amenities immediately pending the inquiry and under sub-section (4), if the Controller on inquiry finds that the tenant has been in enjoyment of the amenities and that they were cut off or withheld by the landlord without just or sufficient cause, he shall make an order directing the landlord to restore such amenities.

So, as the landlord has cut off water supply to the tenant, which he is expected to supply under the agreement, under sub-section (2) of Section 14, the tenant can file an application to the Controller and if the tenant satisfies the Controller that the amenities were cut off without just or sufficient cause, the Controller may pass an interim order and after regular inquiry, the controller will make an order directing the landlord to restore the water supply.

474. Vikranth has taken the house of Narayana Murty on a monthly rent of Rs. 800/-. Vikranth has been living in the said house and regularly paying the rents every month by the due dates for the past ten years. The house is an old house. During rainy season, the water leaks from one corner of the roof of the

house. The kitchen room wall is also about to fall. In spite of repeated requests made by the tenant, the landlord does not effect any repairs to the house though he is taking the rents regularly. What can the tenant, Vikranth do to get the repairs effected?

Under Section 19 of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960, if the landlord fails to make necessary repairs to the building, within a reasonable time after notice is given by the tenant in respect of the building, the Controller may, direct, on application by the tenant, that such repairs may be made by the tenant and that the cost thereof may be deducted by the tenant from the rent payable for the building. However, the cost of repairs shall not exceed in any one year one-twelfth of the rent payable in respect of the building for that year.

So, the tenant Vikranth can file an application before the Controller under Section 19 and on such application, the Controller will pass an order directing that such repairs may be made by the tenant himself and that the cost thereof be deducted by the tenant from the rent payable for the building.

42

THE ANDHRA PRADESH FOREST ACT, 1967

(Act No.1 of 1967)

475. Penalties for acts prohibited in a Reserved Forest

476. Penalties for possession of sandalwood without a licence

477. Seizure of property where forest offence has been committed

478. Rewards to informers

475. Somanna is residing in Seethampeta village. By the side of that village there is a reserve forest. He clears small extent of that reserved forest area by felling the trees and also sets fire to the bushes and small plants thereon. He clears the same and thereupon, builds a small house for his living and also grows some plantation. He also utilises the trees for commercial purposes. On coming to know of the acts committed by Somanna,

the Forest Officials question him. He pleads that he is the owner of the land but he cannot produce any documents. He is not able to produce any permission in writing of the Forest Settlement Officer. Can the Forest Officials initiate any action against Somanna?

Section 7 of the Andhra Pradesh Forest Act, 1967, prohibits the clearing of land, removal of forest produce, etc. So, any person who contravenes the provisions of Section 7 by making any construction of house or forming any plantation or sets fire to a forest notified to be reserved under Section 4 or trespasses upon the forest area or fells any tree or removes any forest produce, be punishable under Section 20 of the said Act with imprisonment for a term which may extend to one year or with fine which may extend to ten thousand rupees. If the acts committed by any individual relates to sandalwood or red sandalwood, he shall be punishable with imprisonment for a term which shall not be less than three months but which shall not exceed one year and with fine which shall not exceed ten thousand rupees. So the Forest Officials can prosecute Somanna under Section 7 r/w. Section 20 of the A.P. Forest Act, 1967.

476. On information that Ramdev, a resident of Adilabad is in possession of sandalwood logs, stocked at his house, the forest officials raid his house and he is found in possession of 20 kgs. of sandalwood and not having any licence granted by the Divisional Forest Officer for the same. On interrogation by the Forest Officials, Ramdev leads the forest officials to a dealer who has got a licence. On inspection of the premises of the dealer, the dealer is found to be in possession of two metric tonnes of sandalwood at two different places, one at notified place and the other at unnotified area. Whether they are liable for prosecution?

Under Section 32 of the A.P. Forest Act, 1967, no person shall have in his possession any quantity of sandalwood in excess of ten kilograms, except under a licence granted by the Divisional Forest Officer. Under Section 36 of the said Act, whoever in contravention of the provisions of Section 32 possess sandalwood, shall be punishable with imprisonment for a term which shall not be less than three months but which shall not exceed one year and with fine which shall not exceed ten thousand rupees. So, the forest officials can prosecute Ramdev and the dealer for the offence under Section 32 r/w.

477. Gouri Shankar was transporting sandalwood and red sandal and forest timber through lorry. On coming to know of this, the Forest Officials way laid in the forest and stopped the lorry and inspected the lorry and found the above forest produce. There are no marks on the said produce. What can the Forest Officials do?

- * Under Section 44 of the A.P. Forest Act, 1967, where there is reason to believe that a forest offence has been committed in respect of any timber or forest produce, such timber or forest produce together with all tools, ropes, chains, boats, vehicles and cattle used in committing any such offence, may be seized by any Forest Officer. After following the due procedure, the Forest Officer concerned can confiscate the same. He has also got power to get the offence compounded, under Section 59 of the A.P. Forest Act, 1967.

478. Ananda Rao became a notorious smuggler of sandalwood and other forest produce. The Forest Officials were not in a position to detect the illegal activities that were being carried on by Ananda Rao. They could not catch him redhanded. A young student, by name Vishnu, who was a Post-Graduate student, possessing social aims and objectives, took up the task of detecting the smugglers. He used to move about in the forest area and detect forest offences and used to pass on information to the forest officials. On information furnished by Vishnu, one lorry which was being transported at the instance of Ananda Rao containing sandalwood covered by husk bags on the top was intercepted by the forest officials and the lorry containing sandalwood was seized and prosecution was launched against Ananda Rao and his followers and it ended in conviction. Whether Vishnu, the student on whose information the contraband was seized, is entitled to any reward?

Under Rule 3 of the Andhra Pradesh Forest Department Reward Rules, 1970, any person furnishing information leading to or otherwise contributing to the detection of forest offence and successful penal action against the offenders, may be granted rewards by the Chief Conservator of Forests or Conservator of Forests or Divisional Forest Officer or Forest Range Officer. Under Rule 4, the Chief Conservator of Forests can grant Rs. 10,000/- or 15% of the value, whichever

is less, of the seized forest or compounding fees collected, the Conservator of Forests can grant Rs. 1,000/- or 15% of the value, whichever is less of the seized forest produce or compounding fees collected, the Divisional Forest Officer can grant Rs. 500/- or 15% of the value, whichever is less, of the seized forest produce or compounding fees collected and the Forest Range Officer can grant Rs. 100/- or 15% of the value, whichever is less, of the seized forest produce or compounding fees collected.

43

THE ANDHRA PRADESH LAND
ENCROACHMENT ACT, 1905

(Act No.3 of 1905)

479. Liability of person unauthorisedly occupying land

479. Sivayya and Raminaidu have jointly encroached upon Government land measuring about 5 acres and occupied it. They raised two huts for their residence and they also put the land under cultivation and raised crops thereon. The Revenue authorities came to know of the unauthorised occupation of the Government land by those two persons and a notice under Section 7 of the A.P. Land Encroachment Act, 1905, was issued to Sivayya and Raminaidu calling upon them to show cause why they should not be proceeded against under Section 5 or 6. After following the procedure as contemplated under section 6 of the said Act, they were evicted from the said land. However, they re-entered the said land and occupied it. Whether they are liable for any punishment?

Under sub-section (3) of Section 6 of the A.P. Land Encroachment Act, 1905, any person who unauthorisedly re-enters and occupies any land from which he was evicted under Section 6 (2), shall be punished with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both.

As Sivayya and Raminaidu, who were proved to have unauthorisedly re-entered and occupied the Government land from which they were evicted under sub-section (2) of Section 6, are liable for punishment with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both.

44

**THE ANDHRA PRADESH ASSIGNED LANDS
(PROHIBITION OF TRANSFERS) ACT, 1977**

(Act No.9 of 1977)

480. *Consequences for transfer of assigned lands*

481. *Prohibition of registration of assigned lands*

480. Gaddenna is a poor landless man. On his representation, as he is proved to be owning less than two and half acres of wet land or five acres of dry land, the Collector assigns 5 acres of government land to him. Gaddenna clears the land, brings it under plough and raises crops thereon. After three years, he sells the assigned land to a third party, Joganna. Under Section 3 of the A.P.Assigned Lands (Prohibition of Transfers) Act, 1977, no landless poor shall transfer any assigned land. So, after coming to know of the sale of the assigned land by the assignee, Gaddenna in favour of a third party Joganna, the Revenue authorities take possession of the assigned land after evicting Joganna and restores the assigned land to Gaddenna. After resumption, Gaddenna again sells the land to another person, Sominaidu. What is the effect of the sale of assigned land after resumption?

Under Section 4 of the A.P.Assigned Lands (Prohibition of Transfers) Act, 1977, under sub-section (1) if, in any case, the District Collector or any other officer not below the rank of a Tahsildar, authorised by him in this behalf, is satisfied that the provision of sub-section (1) of Section 3, have been contravened in respect of any assigned land, he may by order (a) take possession of the assigned land, after evicting the

person in possession in such manner as may be prescribed; and (b) restore the assigned land to the original assignee or his legal heir, or where it is not reasonably practicable to restore the land to such assignee or his legal heir, resume the assigned land to Government for assignment to landless poor person in accordance with the rules for the time being in force. Provided that the assigned land shall not be so restored to the original assignee or his legal heir more than once and in case the original assignee or his legal heir transfers the assigned land again after such restoration, it shall be resumed to the Government for assignment to any other landless poor person.

As the assigned land was sold by the original assignee, Gaddenna to a third party contrary to the provisions of Section 3 of the A.P. Assigned Lands (Prohibition of Transfers) Act, 1977, the land was taken possession of after evicting that third party and restored the same to the original assignee, Gaddenna. As Gaddenna has indulged in the same act of selling the assigned land, possession of which was restored to him after the first sale by him, the said assigned land shall not be restored to him again and it shall be resumed to the Government for assignment to any other landless poor person.

481. Raja Rao is a landless poor person. He has no land of any type. So he applies to the Collector requesting him to assign some Government land. After satisfying that Raja Rao is a landless poor person, the Collector assigns 5 acres of land in his favour. Raja Rao brings it under plough. He has been raising crops and enjoying the same and paying the cist regularly. After ten years, he wants to dispose of the said land to some third party for Rs. 25,000/-. That third party insists on getting the sale deed registered. Whether a sale deed for the sale of assigned land to a third party can be registered?

Under Section 5 of the A.P. Assigned Lands (Prohibition of Transfers) Act, 1977, notwithstanding anything in the Registration Act, 1977, notwithstanding anything in the Registration Act, 1908, on or after the commencement of this Act, no registering officer shall accept the registration any document relating to the transfer of or the creation of any interest in any assigned land included in a list of assigned lands, except after obtaining prior permission of the District

Collector concerned for such registration.

Under sub-section (2) of Section 3, no landless poor person shall transfer any assigned land. So, Raja Rao cannot sell the assigned land to any person, in the first instance. Secondly, under Section 5, no document relating to the transfer of any assigned land can be registered by the registering authority, except after obtaining prior permission of the District Collector concerned for such registration.

45

THE ANDHRA PRADESH REVENUE RECOVERY
ACT, 1864
(Act No.2 of 1864)

482. *Procedure for recovery of arrears of revenue*

483. *Rules for seizure and seal of movable property*

484. *Procedure when defaulter neglects to pay after notice*

485. *Articles exempted from distraint*

486. *Penalty for forcibly or clandestinely taking away distrained property*

487. *Arrest of defaulter in case of wilful or fraudulent non-payment of arrears*

488. *Recovery of sums due to certain banks as arrears of land revenue*

482. Veerabhadrayya has Ac. 10-00 of wet land, situated in Ramannapalem village. He has to pay land revenue for that land for the faslies 1382 and 1383. In spite of repeated demands made by the concerned Village Assistant, he does not pay the land revenue. How can the arrears of land revenue be recovered from Veerabhadrayya?

- * Under Section 4 of the A.P. Revenue Recovery Act, 1964, when the whole or portion of a cist shall not be so paid, the amount of cist or of its unpaid portion shall be deemed to be an arrear of revenue.

Under Section 5 of the said Act, whenever revenue may be in arrear, it shall be lawful for the Collector or other officer empowered by the Collector in that behalf, to proceed to recover the arrear, together with interest and costs of process, by the sale of defaulter's movable and immovable property or by execution against the person of the defaulter.

So, the Revenue authorities can recover the arrears of land revenue from Veerabhadrayya together with interest and costs of process etc., by the sale of defaulter's movable and immovable property or by execution against the person of the defaulter.

483. Parameswara Rao has got Ac. 5-00 of wet land in Pedbayali village in Visakhapatnam District. He did not pay land revenue due for that land for the faslies 1380 and onwards. The Revenue authorities decided to recover the arrears of land revenue together with interest at 6% P.A. and costs by sale of defaulter's movable properties. What is the procedure for bringing the movable property of the defaulter for sale?

In the case of seizure and sale of movable property for arrears of land revenue, under Section 8 of the A.P. Revenue Recovery Act, 1864, the following procedure shall be followed:-

First the Collector or other officer empowered by the Collector in that behalf shall furnish to the person employed to distrain the property of a defaulter; a demand in writing and signed with his name, specifying the name of the defaulter, the amount of the arrear for which the distress may be issued, and the date on which the arrears fell due. The person employed to distrain shall produce the writing which, if the arrear together with the batta due to him, be not at once paid, shall be his authority for making the distress and on the day on which the property may be distrained, shall deliver a copy of such writing to the defaulter, endorsing thereon a list or inventory of the property distrained and the name of the place where it may be lodged or kept.

The writing shall further set forth that the distrained property will be immediately brought to public sale unless the amount with interest, batta and all the expenses of the distress be previously discharged.

When a defaulter may be absent, a copy of the writing with the

endorsement shall be fixed or left at his usual place of residence or on the premises where the property may have been distrained, before the expiration of the third day, calculating from the date of distress.

Under Section 15, distress shall be made after sunrise and before sunset and not otherwise.

Under Section 22, the Public Officer, empowered to sell distrained property, shall cause to be affixed to the outerdoor of the defaulter's house or on the premises where the property may have been distrained, a list of the property to be sold, with a notice specifying the place where, and the day and hour at which the distrained property will be sold and shall cause proclamation of the intended sale to be made by beat of drum in the village to which the lands on which the arrear has accrued may belong and in such places as the Collector or other officer empowered by the Collector in that behalf, may consider necessary to give due publicity to the sale.

No sale shall take place until after the expiration of a period of fifteen days from the date on which the notice may be so affixed.

Under Section 23, at the appointed time, the property shall be put in one or more lots, as the said officer may consider advisable and shall be disposed off to the highest bidder. Where the property may sell for more than the amount of arrears, the surplus, after deducting expenses of process and interest shall be paid to the defaulter

484. Venkata Sastry was residing in Rajahmundry. He has got 10 acres of wet land at his native place, Krishnapuram. As he was residing at Rajahmundry on account of his children's education, he leased out the 10 acres of wet land to Kondayya. Kondayya was raising crops and he was paying rents regularly to the landlord Venkata Sastry. But the landlord was not paying land revenue payable for the said land for the last four faslies. The Village Assistant of Krishnapuram was demanding the tenant to pay the land revenue and he was always saying that his landlord will come and pay. Like that four years elapsed but no land revenue was paid. The tenant raised paddy crop and it grew well and came up for harvest within a month. At that stage, the Revenue authorities wanted to attach the standing paddy crop for

payment of arrears of land revenue, payable by Venkata Sastry for the above said land. Whether the standing paddy crop raised by the tenant be attached for arrears of land revenue?

- * Under Section 9 of the A.P. Revenue Recovery Act, 1964, when the amount due shall not have been paid pursuant to the terms of the demand and no arrangement for securing the same shall have been entered into to the satisfaction of the Collector or other officer empowered by the Collector in that behalf, the distraint shall transmit an inventory of the property distrained to the nearest Public Officer empowered to sell distrained property under Act VII of 1839 in order that it may be publicly sold for the discharge of the arrears due with interest, batta and cost of distraint.

Under Section 11 of the above said Act, the distrainer attaching the crops of the land belonging to defaulter may cause them to be sold when fit for reaping or gathering, or, at his option may cause them to be reaped or gathered in due season and stored in proper places until sold. In the latter case, the expenses of reaping or gathering and storing such crops or products shall be defrayed by the owner upon his redeeming the property, or from the proceeds of the sale in the event of its being sold. When crops or products belonging to a tenant shall have been sold, it shall be lawful for such tenant to deduct the value of the crops or products sold from any rent which may be due by him, then or afterwards, to the defaulter, in respect of the land on which such crops or products have been grown. It shall not be lawful for a tenant whose crops are attached for an arrear of revenue to pay the arrear and deduct the amount in the aforesaid manner from any rent due by him then or afterwards.

485. Nagayya has 3 acres of wet land. He has not been paying land revenue for that land for the last three faslies. As he is having a big family, he is unable to pay land revenue. He has got wearing apparel, cooking, vessels, beds, Mangala Sutram of his wife, one plough, one pair of cattle and has no other properties. The Revenue authorities are taking coercive steps for recovery of arrears of land revenue. They wanted to attach available movable properties of the defaulter for payment of the arrears of land revenue. Whether the wearing apparel, plough and one pair of cattle, which are available with the defaulter and which are sought to be attached by revenue authorities, can be attached for

realisation of arrears of land revenue?

Under Section 14-A of the A.P. Revenue Recovery Act, 1964, the following articles shall not be distrained for arrears of revenue, viz., (a) the necessary wearing apparel, cooking vessels, beds, bedding of the defaulter and such personal ornaments of a woman as in accordance with religious usage cannot be parted with by her; (b) his ploughs implements of husbandry, one pair of ploughing cattle, such manure and seed grain stocked by the defaulter or on his behalf by his relations as may be necessary for the due cultivation of his lands in the ensuing year and (c) any other class of articles which may be notified by the Government as exempt from attachment.

So, as the wearing apparel, plough and one pair of cattle belonging to the defaulter are exempt from distraint under Section 14-A of the A.P. Revenue Recovery Act, they shall not be attached by the Revenue officials for the payment of arrears of land revenue.

486. Anjayya has 20 acres of wet and dry lands. He is personally cultivating those lands by engaging farm servants, etc. He did not pay land revenue due for those lands for the last three faslies. The Revenue authorities attach the standing paddy crop in Ac. 2-00 of land towards arrears of land revenue payable by Anjayya. Not caring for the attachment, Anjayya got the standing paddy crop harvested and heaped it in his Kallam near to his house. Whether the Revenue authority can take any action against the defaulter for clandestinely taking away the distrained property?

Under Section 18 of the A.P. Revenue Recovery Act, 1964, where it may be proved to the satisfaction of any Civil Court of competent jurisdiction that any person has forcibly or clandestinely taken away property once distrained, the Court may summarily cause such property to be restored to the distrainer. The offender will further be liable to the penalties prescribed by the Indian Penal Code, 1860.

487. Lingamnaidu is having two acres of wet and dry lands. He has not been paying land revenue payable for the said lands for the last five faslies. Thereupon, the property of the defaulter was distrained and sold and the proceeds of such sale are not

sufficient to liquidate the arrears of land revenue. Lingamnaidu is also evading to make payment of the balance. Whether the defaulter, Lingamnaidu can be arrested for withholding payment of the arrears?

Under Section 48 of the A.P. Revenue Recovery Act, 1964, when arrears of Revenue with interest and other charges cannot be liquidated by the sale of the property of the defaulter or his surety and the Collector shall have reason to believe that the defaulter or his surety is wilfully withholding payment of the arrears or has been guilty of fraudulent conduct in order to evade payment, it shall be lawful for him to cause the arrest and imprisonment of the defaulter, or his surety not being a female, but no person shall be imprisoned on account of arrears of revenue for a longer period than two years or for a longer period than six months if the arrear does not exceed Rs.500/- provided that such imprisonment shall not extinguish the debt due to the State Government by the defaulter or his surety.

488. Narasayya has 10 acres of wet and dry lands. He took a loan of Rs. 10,000/- from the State Bank of India (Agricultural Branch). He has not repaid that loan amount and interest due thereon. Whether the said loan can be recovered from the defaulter under A.P. Revenue Recovery Act, 1964?

Yes. Under Section 52-A of the A.P. Revenue Recovery Act, 1964, without prejudice to any other mode of recovery which is being taken or may be taken, all loans granted and all advances made to any person by any Bank together with interest on such loans and advances and all sums, such as rents, margin money and the like, due to the bodies may be recovered in the same manner as arrears of land revenue under the provisions of the Revenue Recovery Act, 1984.

**THE ANDHRA PRADESH (ANDHRA AREA)
TENANCY ACT, 1956
(Act No.18 of 1956)**

489. *Remission of rent due to failure of crops due to natural calamities*

490. *Right of tenant to a notice when the landlord intends to sell the land leased out to him*

489. Parasuram has 10 acres of wet land by the side of river. As he is residing in the city on account of education of his children, he leases out the entire land to Devadanam, a farmer, on certain conditions. Devadanam, the tenant has been cultivating the land every year and paying the annual rent as agreed regularly. In the year 1993, as usual he raises paddy crop and there is a very good crop and he expects that he will realise very good crop this year. When the crop is ready for harvest, there comes heavy floods in the river causing breaches to the bunds of the lands. The flood water enters into the fields and consequently most of the crop gets spoiled. Immediately, he sends a word to the landlord explaining the situation and requesting him for remission. Parasuram replies through the man who brought the message that he must be paid the entire rent as usual and he is not concerned with any damage or so. By that time there is hardly fifteen days left for harvesting the paddy crop. As per the estimate of the elders, the tenant may get only 1/4th of the usual crop. What he has to do for getting remission of rent?

Under Section 8 of the Andhra Pradesh (Andhra Area) Tenancy Act, 1956, where there has been a total or partial failure of crops in any year due to widespread calamities, such as cyclone, drought or flood, the cultivating tenant may make an application to the Special Officer for the remission of rent due by him and the Special Officer shall after making an inquiry in the manner prescribed, order such remission of rent as he may consider just in the circumstances of the case. Every such application shall be made at least fifteen days before the crop is cut and removed and a copy of such application shall also

be served on the landlord by the cultivating tenant.

So, as almost all the crop is spoiled and damaged on account of floods, the tenant, Devadanam has to submit an application as required under Section 8 of the Andhra Pradesh (Andhra Area) Tenancy Act, 1956, before the Special Officer requesting him for grant of remission of rent due by him. Thereupon, the Special Officer shall, after making an inquiry, order such remission of rent as he may consider just in the circumstances of the case. The tenant must submit such an application to the Special Officer at least fifteen days before the crop is cut and removed and a copy of such application shall also be served on the landlord by the cultivating tenant, Devadanam.

490. Ramachandra Rao has got 10 acres of Wet land. He leased that land to Yellaiah. He was cultivating the land and regularly paying the rent to the landlord. After five years, the landlord was making preparations for selling the said land. The tenant came to know of the intention of the landlord to sell the land. He wanted to purchase the land. As the land is in possession of a tenant and if the landlord intends to sell the land which is in possession of a tenant, is there any duty cast upon the landlord to inform the tenant before selling the land to a third party?

Under Section 15 (1) of the Andhra Pradesh (Andhra Area) Tenancy Act, 1956, any landlord intending to sell the land leased to a cultivating tenant, shall first give notice to such cultivating tenant, of his intention to sell such land, and requiring him to exercise his option to purchase the land, the particulars to be specified in the notice and the time within which the option shall be exercised by cultivating tenant shall be mentioned. Under sub-section (2), if the cultivating tenant exercises his option to purchase the land and there is an agreement between the landlord and his cultivating tenant in regard to the price payable, the landlord shall sell the land to such cultivating tenant in accordance with such agreement. Under sub-section (5), if the cultivating tenant fails to exercise his option to purchase the land or fails to pay the first instalment of the reasonable price, the landlord shall be entitled to sell the land to any other person.

So, under Section 15 (1), the landlord must first give notice to the cultivating tenant Yellaiah, expressing his intention to sell the land. Thereupon, the cultivating tenant can exercise his option and purchase the land.

THE ANDHRA PRADESH (TELANGANA AREA)
TENANCY AND AGRICULTURAL LANDS ACT,
1950

(Act No. 21 of 1950)

491. *Option of the tenant to purchase the site in his occupation*

492. *Tenant's right to trees planted on land leased to him*

493. *Notice to protected tenant by the landlord when the latter intends to sell the land leased out to the tenant*

491. Somasundaram has got a vacant site. With the permission of the land holder, Subbanna his tenant constructed a dwelling house on the said site and was residing therein. He used to pay rent for the site regularly. The tenant continued to live in the said house so constructed by him on the site of the land holder, for about ten years. After ten years, the land holder asked the tenant to vacate the premises as he intended to sell the said site to some third party. But the tenant, Subbanna objected for it and he expressed to purchase the same and asked the land holder to sell the site to him. Whether the land holder, Somasundaram can sell the site to any third party in preference to the tenant, Subbanna?

Under Section 20 of the A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950, under sub-section (1), if in any village, a tenant is in occupation of a dwelling house on a site belonging to his land holder, such tenant shall not be evicted from such dwelling house unless (a) the landholder proves that the dwelling house was not built at the expense of such tenant or his predecessor-in-title, and (b) such tenant makes default in the payment of the rent, if any, which has been paying for the use and occupation of such site.

Under sub-section (1) of Section 21, if the landholder of a site, referred to in Section 20, intends to sell such site such tenant at the expense of whom or whose predecessor-in-title, a dwelling house is built thereon, shall be given in the manner provided in sub-section (2) the first option of purchasing the site at value determined by the Tribunal. Under sub-section

(2), the land holder intending to sell such site shall give notice in writing to the tenant requiring him to state within three months from the date of service of such notice whether he is willing to purchase the site. Under sub-section (3), if within the said period the tenant intimates in writing to the land-holder that he is willing to purchase the site, the landholder shall make an application to the Tribunal for the determination of value of the site. On receipt of such application, the Tribunal, after giving notice to the tenant and after holding enquiry, shall determine the value of the site, and shall by an order in writing, require the tenant to deposit the amount or value so determined within three months from the date of such order. On the deposit of such amount, the site shall be deemed to have been transferred to the tenant and the amount deposited shall be paid to the landholder and the Tribunal shall on payment of the prescribed fees, grant a certificate in the prescribed form to the tenant specifying therein the site so transferred and the name of the tenant.

Under sub-section (4), if in respect of a site which a landholder offers to sell to the tenant under the provisions of sub-section (1) the value payable therefor by the tenant is agreed to between him and the land holder, either the landholder or the tenant or both jointly may apply to the Tribunal and thereupon the Tribunal shall on the payment of the prescribed fees grant a certificate in the prescribed form.

Under sub-section (5), if the tenant fails to intimate his willingness to purchase the site within the period referred to in sub-section (2) or fails to deposit the amount of the value within the time specified in sub-section (3), the tenant shall be deemed to have relinquished his right of first option to purchase the site and the land holder shall thereupon be entitled to evict the tenant after either paying him such compensation for the value of the structure of the dwelling house as may be determined by the Tribunal or allowing the tenant at his option to remove the materials of the structure.

Under sub-section (6), any sale of a site effected in contravention of this section shall be void. So, as the tenant has constructed the dwelling house at his expenses with the prior permission of the landholder on the site of the landholder and as the tenant continues to pay the agreed rent for the site

regularly without committing any default, under section 20 (1), he shall not be evicted from such dwelling house.

If the landholder intends to sell the site, he shall give a notice in writing, under sub-section (2) of Section 21, to the tenant Subbanna requiring him to state within three months from the date of service of such notice whether he is willing to purchase the site. As in the above case the tenant Subbanna is expressing his intention and is willing to purchase the site, the landholder has no other option except to sell the same to Subbanna. Of course, under sub-section (5), if the tenant fails to intimate his willingness or fails to deposit or pay the sale consideration within three months, the tenant shall be deemed to have relinquished his right of first option and thereupon the landholder is at liberty to sell the same to any third party. Under sub-section (6), any sale effected in contravention of the above procedure shall be void.

492. Prasada Rao has got five acres of dry land. He leased out that land to Gourunaidu. After taking the land for lease, the tenant, Gourunaidu planted coconut trees on the said land. In course of time, two Sapota trees also grew on the land by nature. The landholder Prasada Rao claimed the produce of both the coconut trees and Sapota trees for himself and he objected the tenant the enjoy the usufruct thereof. What is the position with regard to the trees planted by the tenant and with regard to the naturally growing trees?

Sections 23 and 24 of the A.P. (Telangana Area) Tenancy & Agricultural Lands Act, 1950, deal with the above two questions.

Under Section 23, if a tenant has planted any plants or trees on any land leased to him, he shall be entitled to the produce and wood of such trees during the continuance of his tenancy and shall on the termination of his tenancy be entitled to such compensation for such trees as may be determined by the Tahsildar.

Under Section 24, under sub-section (1), a tenant shall, during the continuance of his tenancy, be entitled to two-thirds of the total produce of trees naturally growing on the land, the landholder being entitled to one-third of the produce of such trees.

As the coconut trees were planted by the tenant himself on the land leased out to him, the tenant is entitled to the produce and wood of those trees during the continuance of his tenancy and on the termination of his tenancy he will be entitled to such compensation for those trees as may be determined by the Tahsildar.

As regards the Sapota tree, as it is grown out of nature, the tenant is entitled to two-thirds of the total produce of that naturally grown Sapotal tree during the continuance of his tenancy and the landholder is entitled to one-third of the produce of that tree.

493. Kumaraswamy has ten acres of wet land. As he is living outside the village where the land is situated, he leases out the said land to a tenant, Bheemanna on certain conditions. Accordingly the tenant is cultivating the land and as per the agreement delivering the landlord's share of rent. After some time, the landholder Kumaraswamy intends to sell the land held by the tenant Bheemanna. Whether he can sell the land to any third party?

Under Section 38-D of the A.P. (Telangana Area) Tenancy & Agricultural Lands Act, 1950, under sub-section (1), if the landholder at any time intends to sell the land held by the protected tenant, he shall give a notice in writing of his intention to such protected tenant and offer to sell the land to him. In case the protected tenant intends to purchase the land, he shall intimate in writing his readiness to do so within six months from the date of the receipt of such notice.

Under sub-section (2), if the protected tenant does not exercise the right of purchase in response to the notice given to him by the landholder, under sub-section (1), such protected tenant shall forfeit his right of purchase of the same and the landholder shall be entitled to sell such land to any other person.

As the land holder, Kumaraswamy intends to sell the land, under sub-section (1) of Section 38-D, he must first issue a notice in writing to the tenant Bheemanna of his intention to sell the land. In case Bheemanna intends to purchase the land, he shall intimate in writing his readiness to do so within six months from the date of the receipt of such notice. If he does not exercise the right of purchase, he shall forfeit his

right of purchase and the landholder shall be entitled to sell such land to any other person.

48

THE ANDHRA PRADESH STATE LEGAL AID &
ADVICE TO THE POOR RULES, 1980

- 494. *Eligibility for legal aid*
- 495. *Persons doing scavenging work by profession eligible for legal aid irrespective of the 'Means Test'*
- 496. *Bar of grant of legal aid in cases relating to social offences*
- 497. *Eligibility of persons belonging to SC/ST for legal aid without satisfying the 'Means Test'*
- 498. *Return of legal aid after winning the proceedings for which legal aid is given*

494. Mukunda Rao is having five acres of land. he is raising commercial crops and he is getting a net income of Rs. 20,000/- per year from the land. The cost of the land owned by Mukunda Rao is also about Rs. 40,000/-. He has a civil dispute with his cousin with regard to one acre of land. Having come to know that legal aid is being given to the poor, he has submitted an application to the Legal Aid Board for grant of legal aid for filing a civil suit against his cousin in respect of one acre of land which is in dispute between them. Whether he is entitled to the benefits of legal aid?

Under Rule 24, sub-rule (2) of the Andhra Pradesh State Legal Aid and Advice to the Poor Rules, 1980, no person shall be eligible for aid unless he satisfies the State Board, the Committee for High Court, the District Committee or the Taluk Council, as the case may be, with the requirement of the 'Means Test' that is to say, that the family of which he is a member has an income of less than rupees Rs. 1,000/- per mensem and does not have property exceeding the value of Rs. 30,000/-.

As Mukunda Rao is getting a net income of Rs. 20,000/- per annum, i.e., more than Rs. 12,000/- per annum, and he is having property exceeding the value of Rs. 30,000/-, he is not

eligible for any legal aid, as he does not satisfy the 'Means Test' as required under sub-rule (2) of Rule 24 of the Andhra Pradesh State Legal Aid and Advice to the Poor Rules.

495. Ramanna is a scavenger by profession. He has a civil dispute with regard to partition of the properties with his brother. Elders advise him to approach a Civil Court for getting his share in the property. He has no means to pay the Court fee and also to engage an advocate. Whether he can claim any legal aid from the Legal Aid and Advice Board?

* Under the explanation to Section 24 of the Andhra Pradesh State Legal Aid and Advice to the Poor Rules, 1980, irrespective of the community to which they belong, persons doing scavenging work by profession are eligible for aid irrespective of the 'Means test'

So Ramanna is eligible to claim legal aid to file a suit for partition against his brother and he can apply to the Legal Aid & Advice Board for necessary legal aid. He has to obtain a certificate of 'Means test' from any one of the following persons, viz., Member of Parliament or Member of the State Legislature or Executive Officer of the Revenue Department or any Gazetted Officer of other Departments or Sarpanch of the Gram Panchayat or Village Karanam or Village Munsif and enclose the same to his application.

496. Venkata Ramana is a small Kirana Merchant. He is selling, among other commodities, turmeric powder and oil. The Food Inspector visits his shop and having suspected that the turmeric powder is an adulterated one, takes a sample of the same and sends it for analysis and the Public Analyst opines that it is an adulterated powder. Thereupon, a complaint is filed against Venkata Ramana. As he is a small Kirana Merchant, he is finding it difficult to engage an advocate to defend the case. Whether he can apply to the Legal Aid & Advice Board for necessary legal aid?

Under sub-rule (2) of rule 25 of the Andhra Pradesh State Legal Aid and Advice to the Poor Rules, 1980, no aid shall be given in cases relating to social offences, such as food adulteration.

As the offence, alleged to have been committed by Venkata Ramana is an offence under the Prevention of Food

Adulteration Act, under sub-rule (2) of Rule 25, there is a bar for sanction of legal aid and so he is not entitled to legal aid to defend the food adulteration case.

497. Pratap Pothanna belongs to Scheduled Caste. He served in Military for about 10 years and thereafter he retired from service and returned to his native place. After he settled down in his native place he applied to the Collector for grant of some land and he was accordingly assigned 10 acres of land. He reclaimed that land and was raising crops. Kamanna, a farmer in the same village, felt jealous of Pratap Pothanna enjoying Government land and he trespassed into the land and was causing obstruction to Pratap Pothanna and interfering with his peaceful possession and enjoyment of the land. Whether he can apply to the Legal Aid & Advice Board for legal aid to file a suit against Kamanna for a permanent injunction?

* Under the explanation to Rule 24 of the Andhra Pradesh State Legal Aid and Advice to the Poor Rules, 1980, persons belonging to the Scheduled Caste and Scheduled Tribes are eligible for aid without satisfying the 'Means Test'. He has to obtain a certificate from any one of the following persons, viz., Member of Parliament, or Member of the State Legislature, or Executive Officer of the Revenue Department or any Gazetted Officer of other Departments or Sarpanch of the Gram Panchayat or Village Karanam or Village Munsif and enclose the same to his application.

498. Babu Rao belongs to Scheduled Caste. His father owned 10 acres of wet land. Babu Rao has got an elder brother, Somaraju. His father died when Babu Rao was young. As Babu Rao is young, his elder brother, Somaraju used to manage the land. After Babu Rao attained majority at the age of 21 years he got married. After marriage, disputes arise between the female members and so, both the brothers decided to live separately. Accordingly they started living separately. Then Babu Rao asks his brother to give his share in the land. His brother Somaraju refuses to give any share to Babu Rao saying that he has developed the land and it was also purchased with his hard labour. Babu Rao has no means to approach a Civil Court for getting his share. However, on the advice of the elders he applied to the Legal Aid & Advice Board for necessary legal aid. As Babu Rao has satisfied the 'Means Test', 'Prima facie case test'

and 'Purpose test', he is granted necessary legal aid by engaging a counsel who filed a suit for partition. After trial the suit is decreed and Babu Rao got his share of 5 acres of wet land, which is valued more than Rs. 50,000/-. As he has got back his property worth more than Rs. 50,000/-, whether he has to return the legal aid granted to him to the Legal Aid & Advice Board?

- * When the person who has obtained legal aid and filed a suit and ultimately won the suit and got back his properties worth more than Rs. 30,000/-, he has to return the legal aid given to him. As Babu Rao has filed the suit with the legal aid granted by the Legal Aid & Advice Board and won the suit and ultimately got back his share of land worth more than Rs. 50,000/- he has to return the legal aid given to him.

49

SPECIAL ORDERS OF THE GOVERNMENT FOR CLAIMING COMPENSATION BY THE DEPENDENTS OF THE DECEASED PERSONS IN CERTAIN CASES

- 499. *Dependants' right to claim compensation in case of unnatural death of a person*
- 500. *Rights of dependants of a deceased person to claim compensation*
- 501. *Exemption from payment of court fee by a Scheduled Tribe*

499. Parasuram, aged about 50 years, is a shepherd by caste. He has about 300 goats. For rearing the goats, he engages a person by name, Yendodu, aged about 21 years. He is being paid a monthly salary of Rs. 300/- for rearing the goats. Yendodu takes the goats every day in the morning to a nearby forest for grazing. One day, while he is in the forest, one snake bites him and he dies. He has his old parents and sister who are depending upon him. Whether the parents and sister of Yendodu can claim any amount from anybody for the unnatural death of Yendodu?

When a person, whose annual income is less than Rs. 7,200/-, met with an unnatural death other than the

death caused on account of motor accidents, viz., on account of snake bite or falling from trees, eaten by wild animals, etc., his dependants are entitled to claim compensation of Rs. 3,000/- from the United Insurance Company. For that purpose they have to submit an application within 180 days of the death of the person to the concerned M.R.O.

500. Chandrayya has 2 acres of wet land. For the development of land, he has obtained a loan from the Bank under the village development scheme and utilises the same for his land and raised crops. Chandrayya has his wife and two sons. Before reaping the crop, he dies. whether his dependants are entitled to any monetary assistance from any Department?

- * If any person took loan under Village Development Scheme and subsequently met with an accident and died, his dependants are entitled to an amount of Rs. 6,000/- from the Life Insurance Corporation and they have to submit their application claiming the amount to the I.R.D.P. though D.R.D.A. under village Development Scheme, who in their turn will forward the application to the Life Insurance Corporation. So the wife and children of Chandrayya can apply to the I.R.D.P. through D.R.D.A. for sanction of the amount of Rs. 6,000/- under the Village Development Scheme and the said amount will be paid by the Life Insurance Corporation. Even in respect of natural death, the dependants are entitled to claim a sum of Rs. 3,000/- in the above procedure.

501. Rangappa belongs to Scheduled Tribe. He occupied one acre of land situated in Bhadrachalam area and reclaimed it and raised crops. Sarvothama Rao, a non-tibal trespassed into his land and caused obstruction. Thereupon, the elders in their caste advised Rangappa to go to a Civil Court and obtain injunction against Sarvotham Rao. He has no money to pay the Court fee. Whether he can claim any exemption from payment of court fee by virtue of his caste?

As per G.O.Ms.No.381, Courts-A dated 20-3-1968, whenever any Scheduled Tribe wants to file suit in any court for a genuine and reasonable cause for litigation, he is exempted from payment of Court fee and need not pay any Court fee.

KNOW ABOUT THE AUTHOR

Know about the author who created an All-India record in disposal of cases as a Sessions Judge and also as a Judge of the High Court of Andhra Pradesh.

In murder cases, the procedure followed under Law is that, after committal by the Judicial First Class Magistrate, the case will be taken on file by the Sessions Judge. After taking the case on file, Sessions case will be numbered and summons would be issued to the accused. After appearance of the accused, charges will be framed after being heard and thereafter witnesses will be examined. After completion of prosecution evidence, the accused will be examined under Section 313, Cr.P.C. and arguments will be heard and thereafter judgment will be pronounced.

The author, as a Sessions Judge, has got an opportunity of disposing of 119 Sessions cases within one month, 112 Sessions cases within two months and 35 Sessions cases within three months from the date of registration of each case. At Visakhapatnam as a Principal District & Sessions Judge and at Hyderabad as Metropolitan Sessions Judge, not even a single Sessions case was kept pending without disposal for three months.

No Sessions Judge in India was able to dispose of so many Sessions cases within one month from the date of registration of a Sessions case.

As a High Court Judge also, the author has created an All-India record and the table, shown below, gives a true story of the same.

The Judges are expected to dispose of three cases per working day. But the author has disposed off 24 cases on an average per working day in the 1647 working days during the 8 years period, as against the average disposal of about 8 cases per working day by a High Court Judge of Andhra Pradesh.

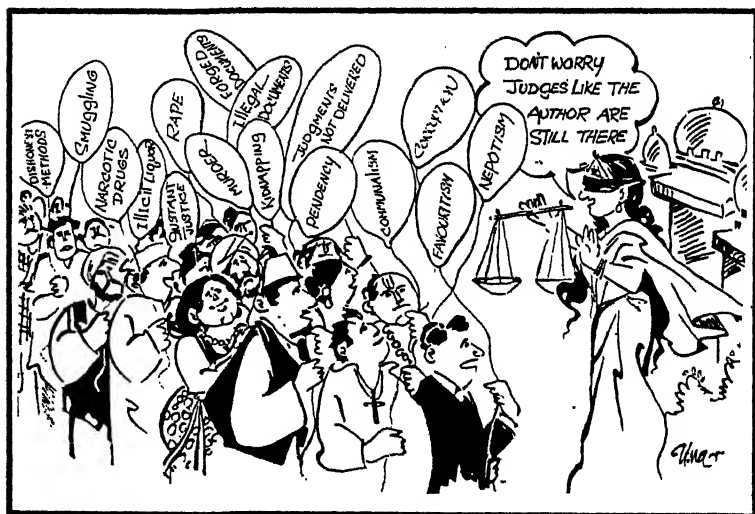
The Author's disposing of 24 cases per day amounts to three times the average disposal by a Judge and eight times of the expected disposal by a Judge on a working day.

In a calender year there are 210 working days. The author has not availed even a single casual leave or any other leave and he has attended the court on all the working days during the years 1990, 1991, 1992 and 1993. Even in the year 1989, he has availed only one casual leave.

No Government servant, much less a Gazetted Officer has got this record of attending the office regularly without applying for any type of leave from work.

Statement showing disposal of main cases in the High Court of Andhra Pradesh and average disposal per judge and disposal by Sri Justice G. Radhakrishna Rao.

	1987	1988	1989	1990	1991	1992	1993
Total No. of main cases disposed of in High Court	45308	41924	36262	25041	24746	23895	25824
Average per Judge	2087	2324	2050	1293	1292	1128	1254
Disposal by GRKR J.	4323	10677	7031	3995	5414	3506	3379



"JAI JUSTICE MATHA"